

## SCHEDULES

### SCHEDULE 8

#### EMPLOYEE SHARE SCHEMES

#### PART 2

#### SAYE OPTION SCHEMES

##### *Amendments to Chapter 7 of Part 7 of ITEPA 2003*

- 97 Chapter 7 of Part 7 of ITEPA 2003 (employment income: income and exemptions relating to securities: SAYE option schemes) is amended as follows.
- 98 In the title omit “APPROVED”.
- 99 (1) Section 516 (introduction to SAYE option schemes) is amended as follows.
- (2) In the heading omit “**Approved**”.
- (3) In subsection (1)—
- (a) omit paragraph (a) and the “and” after it, and
- (b) in paragraph (b) for “those” substitute “SAYE option schemes which are Schedule 3 SAYE option”.
- (4) Omit subsection (2).
- (5) In subsection (3)(c) for “approved” substitute “Schedule 3”.
- (6) In subsection (4)—
- (a) omit the definition of “approved”, and
- (b) after the definition of “SAYE option scheme” insert—
- ““Schedule 3 SAYE option scheme” is to be read in accordance with paragraph 1 and Part 8 of Schedule 3;”.
- 100 In section 517 (share options to which Chapter applies) in subsection (1)(a) for “an approved” substitute “a Schedule 3”.
- 101 (1) Section 519 (no charge in respect of exercise of option) is amended as follows.
- (2) In subsection (1)(a) for “approved” substitute “a Schedule 3 SAYE option scheme”.
- (3) In subsection (3A)—
- (a) in paragraph (a) for “approved” substitute “a Schedule 3 SAYE option scheme”,
- (b) in paragraph (b)(i) for “or (4)” substitute “, (4) or (4A)”,
- (c) in paragraphs (c), (d) and (f) after sub-paragraph (ii) omit “or” and insert—
- “(ia) the non-UK company reorganisation arrangement, or”, and

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- (d) in paragraph (e) after sub-paragraph (ii) omit “or” and insert—  
 “(ia) the making of any non-UK company reorganisation arrangement which would fall within subsection (3H), or”.

(4) In subsection (3H)—

- (a) after “arrangement” insert “or a non-UK company reorganisation arrangement”, and  
 (b) in paragraph (b) for “an approved” substitute “a Schedule 3”.

(5) In subsection (5)(b)—

- (a) for “paragraph 42(3) provides” substitute “paragraphs 40H(4) and 40I(9) provide”,  
 (b) for “approved” substitute “a Schedule 3 SAYE option scheme”, and  
 (c) for “approval of the scheme has been previously withdrawn” substitute “the scheme is not a Schedule 3 SAYE option scheme”.

102 Schedule 3 is amended as follows.

103 In the title omit “APPROVED”.

104 In the cross-heading before paragraph 1 for “*Approval of*” substitute “*Introduction to Schedule 3*”.

105 (1) Paragraph 1 (introduction) is amended as follows.

(2) For sub-paragraphs (1) and (2) substitute—

“(A1) For the purposes of the SAYE code an SAYE option scheme is a Schedule 3 SAYE option scheme if the requirements of Parts 2 to 7 of this Schedule are met in relation to the scheme.”

(3) For sub-paragraph (4) substitute—

“(4) Sub-paragraph (A1) is subject to Part 8 of this Schedule which—

- (a) requires notice of a scheme to be given to Her Majesty’s Revenue and Customs (“HMRC”) in order for the scheme to be a Schedule 3 SAYE option scheme (see paragraph 40A(1)),  
 (b) provides for a scheme in relation to which such notice is given to be a Schedule 3 SAYE option scheme (see paragraph 40A(4)), and  
 (c) gives power to HMRC to enquire into a scheme and to decide that the scheme should not be a Schedule 3 SAYE option scheme (see paragraphs 40F to 40I).”

106 In the title of Part 2 omit “FOR APPROVAL”.

107 In the cross-heading before paragraph 4 omit “*for approval*”.

108 For paragraph 5 (general restriction on contents of scheme) substitute—

- “5 (1) The purpose of the scheme must be to provide, in accordance with this Schedule, benefits for employees and directors in the form of share options.  
 (2) The scheme must not provide benefits to employees or directors otherwise than in accordance with this Schedule.

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- (3) For example, the scheme must not provide cash as an alternative to share options or shares which might otherwise be acquired by the exercise of share options.”
- 109 In paragraph 17 (requirements relating to shares that may be subject to share options) after sub-paragraph (1) insert—
- “(1A) Sub-paragraph (1) and the other paragraphs of this Part are subject to paragraph 37(6B).”
- 110 In paragraph 25 (requirements as to contributions to savings arrangements) in sub-paragraph (3)(a) for “approved” substitute “Schedule 3”.
- 111 (1) Paragraph 28 (requirements as to price for acquisition of shares) is amended as follows.
- (2) After sub-paragraph (3) insert—
- “(3A) If the scheme makes provision under sub-paragraph (3), the variation or variations made under that provision to take account of a variation in any share capital must (in particular) secure—
- (a) that the total market value of the shares which may be acquired by the exercise of the share option is immediately after the variation or variations substantially the same as what it was immediately before the variation or variations, and
- (b) that the total price at which those shares may be acquired is immediately after the variation or variations substantially the same as what it was immediately before the variation or variations.
- (3B) Sub-paragraph (3) does not authorise any variation which would result in the requirements of the other paragraphs of this Schedule not being met in relation to the share option.”
- (3) Omit sub-paragraph (4).
- 112 In paragraph 32 (exercise of options: death) after “exercised” insert “at any time”.
- 113 In paragraph 34 (exercise of options: scheme-related employment ends) in sub-paragraph (5)—
- (a) omit paragraph (a) and the “or” after it, and
- (b) in paragraph (b) after “organiser” insert “where the transfer is not a relevant transfer within the meaning of the Transfer of Undertakings (Protection of Employment) Regulations 2006”.
- 114 (1) Paragraph 37 (exercise of options: company events) is amended as follows.
- (2) In sub-paragraph (1) after “(4)” insert “, (4A)”.
- (3) In sub-paragraph (4)(b) for “an approved” substitute “a Schedule 3”.
- (4) After sub-paragraph (4) insert—
- “(4A) The relevant date for the purposes of this sub-paragraph is the date on which a non-UK company reorganisation arrangement applicable to or affecting—

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- (a) all the ordinary share capital of the company or all the shares of the same class as the shares to which the option relates, or
- (b) all the shares, or all the shares of that same class, which are held by a class of shareholders identified otherwise than by reference to their employments or directorships or their participation in a Schedule 3 SAYE option scheme,

becomes binding on the shareholders covered by it.”

(5) After sub-paragraph (6) insert—

“(6A) Sub-paragraphs (6B) to (6F) apply if the scheme makes provision under sub-paragraph (1) or (6).

(6B) The scheme may provide that if, in consequence of a relevant event, shares in the company to which a share option relates no longer meet the requirements of Part 4 of this Schedule, the share option may be exercised under the provision made under sub-paragraph (1) or (6) (as the case may be) no later than 20 days after the day on which the relevant event occurs, notwithstanding that the shares no longer meet the requirements of Part 4 of this Schedule.

(6C) In sub-paragraph (6B) “relevant event” means—

- (a) a person obtaining control of the company as mentioned in sub-paragraph (2)(a);
- (b) a person obtaining control of the company as a result of a compromise or arrangement sanctioned by the court as mentioned in sub-paragraph (4);
- (c) a person obtaining control of the company as a result of a non-UK company reorganisation arrangement which has become binding on the shareholders covered by it as mentioned in sub-paragraph (4A);
- (d) a person who is bound or entitled to acquire shares in the company as mentioned in sub-paragraph (6) obtaining control of the company.

(6D) Provision made under sub-paragraph (6B) may not authorise the exercise of a share option, as the case may be—

- (a) at a time outside the 6 month period mentioned in sub-paragraph (1), or
- (b) at a time not covered by sub-paragraph (6).

(6E) The scheme may provide that a share option relating to shares in a company which is exercised during the period of 20 days ending with—

- (a) the relevant date for the purposes of sub-paragraph (2), (4) or (4A), or
- (b) the date on which any person becomes bound or entitled to acquire shares in the company as mentioned in sub-paragraph (6),

is to be treated as if it had been exercised in accordance with the provision made under sub-paragraph (1) or (6) (as the case may be).

(6F) If the scheme makes provision under sub-paragraph (6E) it must also provide that if—

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- (a) a share option is exercised in reliance on that provision in anticipation of—
    - (i) an event mentioned in sub-paragraph (2), (4) or (4A) occurring, or
    - (ii) a person becoming bound or entitled to acquire shares in the company as mentioned in sub-paragraph (6), but
  - (b) as the case may be—
    - (i) the relevant date for the purposes of sub-paragraph (2), (4) or (4A) does not fall during the period of 20 days beginning with the date on which the share option is exercised, or
    - (ii) the person does not become bound or entitled to acquire shares in the company by the end of the period of 20 days beginning with the date on which the share option is exercised,

the exercise of the share option is to be treated as having had no effect.”
- 115 (1) Paragraph 38 (exchanges of options on company reorganisation) is amended as follows.
  - (2) In sub-paragraph (2) after paragraph (b) omit “or” and insert—
    - “(ba) obtains control of the scheme company as a result of a non-UK company reorganisation arrangement which has become binding on the shareholders covered by it; or”.
  - (3) In sub-paragraph (3) after paragraph (b) omit “and” and insert—
    - “(ba) where control is obtained in the way set out in sub-paragraph (2) (ba), within the period of 6 months beginning with the date on which the non-UK company reorganisation arrangement becomes binding on the shareholders covered by it, and”.
- 116 (1) Paragraph 39 (requirements about share options granted in exchange) is amended as follows.
  - (2) In sub-paragraph (4)—
    - (a) in paragraph (c) for “equal” substitute “be substantially the same as”, and
    - (b) in paragraph (d) for “equal to” substitute “substantially the same as”.
  - (3) After sub-paragraph (7) insert—
    - “(8) For the purposes of this paragraph the market value of any shares is to be determined using a methodology agreed by Her Majesty’s Revenue and Customs.”
- 117 For Part 8 substitute—

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## “PART 8

### NOTIFICATION OF SCHEMES, ANNUAL RETURNS AND ENQUIRIES

#### 40A Notice of scheme to be given to HMRC

- (1) For an SAYE option scheme to be a Schedule 3 SAYE option scheme, notice of the scheme must be given to Her Majesty’s Revenue and Customs (“HMRC”).
- (2) The notice must—
  - (a) be given by the scheme organiser,
  - (b) contain, or be accompanied by, such information as HMRC may require, and
  - (c) contain a declaration within sub-paragraph (3) made by such persons as HMRC may require.
- (3) A declaration within this sub-paragraph is a declaration—
  - (a) that the requirements of Parts 2 to 7 of this Schedule are met in relation to the scheme, and
  - (b) if the declaration is made after the first date on which share options are granted under the scheme (“the first grant date”), that those requirements—
    - (i) were met in relation to those grants of share options, and
    - (ii) have otherwise been met in relation to the scheme at all times on or after the first grant date when share options granted under the scheme are outstanding.
- (4) If notice is given under this paragraph in relation to an SAYE option scheme, for the purposes of the SAYE code the scheme is to be a Schedule 3 SAYE option scheme at all times on and after the relevant date (but not before that date).
- (5) But if the notice is given after the initial notification deadline, the scheme is to be a Schedule 3 SAYE option scheme only from the beginning of the relevant tax year.
- (6) For the purposes of this Part—
 

“the initial notification deadline” is 6 July in the tax year following that in which the first grant date falls,

“outstanding”, in relation to a share option, means that the option—

  - (a) has not been exercised, but
  - (b) is capable of being exercised in accordance with the scheme (whether on the meeting of any condition or otherwise),

“the relevant date” is—

  - (a) the date on which the declaration within sub-paragraph (3) is made, or
  - (b) if that declaration is made after the first grant date, the first grant date, and

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“the relevant tax year” is—

- (a) the tax year in which the notice under this paragraph is given, or
- (b) if that notice is given on or before 6 July in that tax year, the preceding tax year.

(7) Sub-paragraph (4) is subject to the following paragraphs of this Part.

#### **40B Annual returns**

- (1) This paragraph applies if notice is given in relation to an SAYE option scheme under paragraph 40A.
- (2) The scheme organiser must give to HMRC a return for the tax year in which the relevant date falls and for each subsequent tax year (subject to sub-paragraph (9)).
- (3) If paragraph 40A(5) applies in relation to the scheme, in sub-paragraph (2) the reference to the tax year in which the relevant date falls is to be read as a reference to the relevant tax year.
- (4) A return for a tax year must—
  - (a) contain, or be accompanied by, such information as HMRC may require, and
  - (b) be given on or before 6 July in the following tax year.
- (5) The information which may be required under sub-paragraph (4)(a) includes (in particular) information to enable HMRC to determine the liability to tax, including capital gains tax, of—
  - (a) any person who has participated in the scheme, or
  - (b) any other person whose liability to tax the operation of the scheme is relevant to.
- (6) If during a tax year—
  - (a) an alteration is made in a key feature of the scheme, or
  - (b) variations are made under a provision made under paragraph 28(3) to take account of a variation in any share capital,the return for the tax year must contain a declaration within sub-paragraph (7) made by such persons as HMRC may require.
- (7) A declaration within this sub-paragraph is a declaration, as the case may be—
  - (a) that the alteration has, or
  - (b) that the variations have,not caused the requirements of Parts 2 to 7 of this Schedule not to be met in relation to the scheme.
- (8) For the purposes of sub-paragraph (6)(a) a “key feature” of a scheme is a provision of the scheme which is necessary in order for the requirements of Parts 2 to 7 of this Schedule to be met in relation to the scheme.
- (9) A return is not required for any tax year following that in which the termination condition is met in relation to the scheme.

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- (10) For the purposes of this Part “the termination condition” is met in relation to a scheme when—
- (a) all share options granted under the scheme—
    - (i) have been exercised, or
    - (ii) are no longer capable of being exercised in accordance with the scheme (because, for example, they have lapsed or been cancelled), and
  - (b) no more share options will be granted under the scheme.
- (11) If the scheme organiser becomes aware that—
- (a) anything which should have been included in, or should have accompanied, a return for a tax year was not included in, or did not accompany, the return,
  - (b) anything which should not have been included in, or should not have accompanied, a return for a tax year was included in, or accompanied, the return, or
  - (c) any other error or inaccuracy has occurred in relation to a return for a tax year,
- the scheme organiser must give an amended return correcting the position to HMRC without delay.
- (1) This paragraph applies if the scheme organiser fails to give a return for a tax year (containing, or accompanied by, all required information and declarations) on or before the date mentioned in paragraph 40B(4)(b) (“the date for delivery”).
  - (2) The scheme organiser is liable for a penalty of £100.
  - (3) If the scheme organiser’s failure continues after the end of the period of 3 months beginning with the date for delivery, the scheme organiser is liable for a further penalty of £300.
  - (4) If the scheme organiser’s failure continues after the end of the period of 6 months beginning with the date for delivery, the scheme organiser is liable for a further penalty of £300.
  - (5) The scheme organiser is liable for a further penalty under this sub-paragraph if—
    - (a) the scheme organiser’s failure continues after the end of the period of 9 months beginning with the date for delivery,
    - (b) HMRC decide that such a penalty should be payable, and
    - (c) HMRC give notice to the scheme organiser specifying the period in respect of which the penalty is payable.

(The scheme organiser may be liable for more than one penalty under this sub-paragraph.)
  - (6) The penalty under sub-paragraph (5) is £10 for each day that the failure continues during the period specified in the notice under sub-paragraph (5)(c).
  - (7) The period specified in the notice under sub-paragraph (5)(c)—
    - (a) may begin earlier than the date on which the notice is given, but

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- (b) may not begin until after the end of the period mentioned in sub-paragraph (5)(a) or, if relevant, the end of any period specified in any previous notice under sub-paragraph (5)(c) given in relation to the failure.
- (8) Liability for a penalty under this paragraph does not arise if the scheme organiser satisfies HMRC (or, on an appeal under paragraph 40K, the tribunal) that there is a reasonable excuse for its failure.
- (9) For the purposes of sub-paragraph (8)—
  - (a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside the scheme organiser’s control,
  - (b) where the scheme organiser relies on any other person to do anything, that is not a reasonable excuse unless the scheme organiser took reasonable care to avoid the failure, and
  - (c) where the scheme organiser had a reasonable excuse for the failure but the excuse ceased, the scheme organiser is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

#### **40D Notices and returns to be given electronically etc**

- (1) A notice under paragraph 40A, and any information accompanying the notice, must be given electronically.
- (2) A return under paragraph 40B, and any information accompanying the return, must be given electronically.
- (3) But, if HMRC consider it appropriate to do so, HMRC may allow the scheme organiser to give a notice or return or any accompanying information in another way; and, if HMRC do so, the notice, return or information must be given in that other way.
- (4) The Commissioners for Her Majesty’s Revenue and Customs—
  - (a) must prescribe how notices, returns and accompanying information are to be given electronically;
  - (b) may make different provision for different cases or circumstances.
- (1) This paragraph applies if a return under paragraph 40B, or any information accompanying such a return—
  - (a) is given otherwise than in accordance with paragraph 40D, or
  - (b) contains a material inaccuracy—
    - (i) which is careless or deliberate, or
    - (ii) which is not corrected as required by paragraph 40B(11).
- (2) The scheme organiser is liable for a penalty of an amount decided by HMRC.
- (3) The penalty must not exceed £5,000.
- (4) For the purposes of sub-paragraph (1)(b)(i) an inaccuracy is careless if it is due to a failure by the scheme organiser to take reasonable care.

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#### 40F Enquiries

- (1) This paragraph applies if notice is given in relation to an SAYE option scheme under paragraph 40A.
- (2) HMRC may enquire into the scheme if HMRC give notice to the scheme organiser of HMRC's intention to do so no later than—
  - (a) 6 July in the tax year following the tax year in which the initial notification deadline falls, or
  - (b) if the notice under paragraph 40A is given after the initial notification deadline, 6 July in the second tax year following the relevant tax year.
- (3) HMRC may enquire into the scheme if HMRC give notice to the scheme organiser of HMRC's intention to do so no later than 12 months after the date on which a declaration within paragraph 40B(7) is given to HMRC.
- (4) Sub-paragraph (5) applies if (at any time) HMRC have reasonable grounds for believing that requirements of Parts 2 to 7 of this Schedule—
  - (a) are not met in relation to the scheme, or
  - (b) have not been met in relation to the scheme.
- (5) HMRC may enquire into the scheme if HMRC give notice to the scheme organiser of HMRC's intention to do so.
- (6) Notice may be given, and an enquiry may be conducted, under sub-paragraph (2), (3) or (5) even though the termination condition is met in relation to the scheme.
- (1) An enquiry under paragraph 40F(2), (3) or (5) is completed when HMRC give the scheme organiser a notice (a "closure notice") stating—
  - (a) that HMRC have completed the enquiry, and
  - (b) that—
    - (i) paragraph 40H is to apply,
    - (ii) paragraph 40I is to apply, or
    - (iii) neither paragraph 40H nor paragraph 40I is to apply.
- (2) If the scheme organiser receives notice under paragraph 40F(2), (3) or (5), the scheme organiser may make an application to the tribunal for a direction requiring a closure notice for the enquiry to be given within a specified period.
- (3) The application is to be subject to the relevant provisions of Part 5 of TMA 1970 (see, in particular, section 48(2)(b) of that Act).
- (4) The tribunal must give a direction unless satisfied that HMRC have reasonable grounds for not giving the closure notice within the specified period.
- (1) This paragraph applies if HMRC decide—
  - (a) that requirements of Parts 2 to 7 of this Schedule—
    - (i) are not met in relation to the scheme, or
    - (ii) have not been met in relation to the scheme, and

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- (b) that the situation is, or was, so serious that this paragraph should apply.
- (2) If this paragraph applies—
- (a) the scheme is not to be a Schedule 3 SAYE option scheme with effect from—
    - (i) such relevant time as is specified in the closure notice, or
    - (ii) if no relevant time is specified, the time of the giving of the closure notice, and
  - (b) the scheme organiser is liable for a penalty of an amount decided by HMRC.
- (3) Sub-paragraph (4) applies in relation to a share option granted under the scheme if the option—
- (a) is granted at a time before that mentioned in sub-paragraph (2)(a)(i) or (ii) (as the case may be) when the scheme is a Schedule 3 SAYE option scheme, but
  - (b) is exercised at or after the time mentioned in sub-paragraph (2)(a)(i) or (ii) (as the case may be).
- (4) For the purposes of section 519 (exemption in respect of exercise of share option) in its application to the option, the scheme is to be taken still to be a Schedule 3 SAYE option scheme at the time of the exercise of the option.
- (5) The penalty under sub-paragraph (2)(b) must not exceed an amount equal to twice HMRC’s reasonable estimate of—
- (a) the total income tax for which persons who have been granted share options under the scheme have not been liable, or will not be liable in the future, and
  - (b) the total contributions under Part 1 of SSCBA 1992 or SSCB(NI)A 1992 for which any persons have not been liable, or will not be liable in the future,
- in consequence of the scheme having been a Schedule 3 SAYE option scheme at any relevant time before the time mentioned in sub-paragraph (2)(a)(i) or (ii) (as the case may be).
- (6) The liabilities covered by sub-paragraph (5) include liabilities for income tax or contributions which a person has not had, or will not have, in consequence of sub-paragraph (4).
- (7) In this paragraph “relevant time” means any time before the giving of the closure notice when requirements of Parts 2 to 7 of this Schedule were not met in relation to the scheme.
- (1) This paragraph applies if HMRC decide—
- (a) that requirements of Parts 2 to 7 of this Schedule—
    - (i) are not met in relation to the scheme, or
    - (ii) have not been met in relation to the scheme, but
  - (b) that the situation is not, or was not, so serious that paragraph 40H should apply.
- (2) If this paragraph applies, the scheme organiser—
- (a) is liable for a penalty of an amount decided by HMRC, and

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- (b) must, no later than 90 days after the relevant day, secure that the requirements of Parts 2 to 7 of this Schedule are met in relation to the scheme.
- (3) The penalty under sub-paragraph (2)(a) must not exceed £5,000.
- (4) In sub-paragraph (2)(b) “the relevant day” means—
- (a) the last day of the period in which notice of an appeal under paragraph 40K(2)(b) may be given, or
  - (b) if notice of such an appeal is given, the day on which the appeal is determined or withdrawn.
- (5) Sub-paragraph (2)(b) does not apply if the termination condition was met in relation to the scheme before the closure notice was given or is met before the end of the 90 day period mentioned in sub-paragraph (2)(b).
- (6) If the scheme organiser fails to comply with sub-paragraph (2)(b), HMRC may give the scheme organiser a notice stating that that is the case (a “default notice”).
- (7) If the scheme organiser is given a default notice—
- (a) the scheme is not to be a Schedule 3 SAYE option scheme with effect from—
    - (i) such relevant time as is specified in the default notice, or
    - (ii) if no relevant time is specified, the time of the giving of the default notice, and
  - (b) the scheme organiser is liable for a further penalty of an amount decided by HMRC.
- (8) Sub-paragraph (9) applies in relation to a share option granted under the scheme if the option—
- (a) is granted at a time before that mentioned in sub-paragraph (7)(a)(i) or (ii) (as the case may be) when the scheme is a Schedule 3 SAYE option scheme, but
  - (b) is exercised at or after the time mentioned in sub-paragraph (7)(a)(i) or (ii) (as the case may be).
- (9) For the purposes of section 519 (exemption in respect of exercise of share option) in its application to the option, the scheme is to be taken still to be a Schedule 3 SAYE option scheme at the time of the exercise of the option.
- (10) The penalty under sub-paragraph (7)(b) must not exceed an amount equal to twice HMRC’s reasonable estimate of—
- (a) the total income tax for which persons who have been granted share options under the scheme have not been liable, or will not be liable in the future, and
  - (b) the total contributions under Part 1 of SSCBA 1992 or SSCB(NI)A 1992 for which any persons have not been liable, or will not be liable in the future,
- in consequence of the scheme having been a Schedule 3 SAYE option scheme at any relevant time before the time mentioned in sub-paragraph (7)(a)(i) or (ii) (as the case may be).

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- (11) The liabilities covered by sub-paragraph (10) include liabilities for income tax or contributions which a person has not had, or will not have, in consequence of sub-paragraph (9).
- (12) In this paragraph “relevant time” means any time before the giving of the default notice when requirements of Parts 2 to 7 of this Schedule were not met in relation to the scheme.

#### **40J Assessment of penalties**

- (1) This paragraph applies if the scheme organiser is liable for a penalty under this Part.
- (2) HMRC must assess the penalty and notify the scheme organiser of the assessment.
- (3) Subject to sub-paragraphs (4) and (5), the assessment must be made no later than 12 months after the date on which the scheme organiser becomes liable for the penalty.
- (4) In the case of a penalty under paragraph 40E(1)(b), the assessment must be made no later than—
  - (a) 12 months after the date on which HMRC become aware of the inaccuracy, and
  - (b) 6 years after the date on which the scheme organiser becomes liable for the penalty.
- (5) In the case of a penalty under paragraph 40H(2)(b) or 40I(2)(a) or (7)(b) where notice of appeal is given under paragraph 40K(2) or (3), the assessment must be made no later than 12 months after the date on which the appeal is determined or withdrawn.
- (6) A penalty payable under this Part must be paid—
  - (a) no later than 30 days after the date on which the notice under sub-paragraph (2) is given to the scheme organiser, or
  - (b) if notice of appeal is given against the penalty under paragraph 40K(1) or (4), no later than 30 days after the date on which the appeal is determined or withdrawn.
- (7) The penalty may be enforced as if it were corporation tax or, if the scheme organiser is not within the charge to corporation tax, income tax charged in an assessment and due and payable.
- (8) Sections 100 to 103 of TMA 1970 do not apply to a penalty under this Part.

#### **40K Appeals**

- (1) The scheme organiser may appeal against a decision of HMRC that the scheme organiser is liable for a penalty under paragraph 40C or 40E.
- (2) The scheme organiser may appeal against—
  - (a) a decision of HMRC mentioned in paragraph 40H(1) or a decision of HMRC to specify, or not to specify, a relevant time in the closure notice;

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- (b) a decision of HMRC mentioned in paragraph 40I(1).
  - (3) The scheme organiser may appeal against a decision of HMRC—
    - (a) to give the scheme organiser a default notice under paragraph 40I;
    - (b) to specify, or not to specify, a relevant time in the default notice.
  - (4) The scheme organiser may appeal against a decision of HMRC as to the amount of a penalty payable by the scheme organiser under this Part.
  - (5) Notice of appeal must be given to HMRC no later than 30 days after the date on which—
    - (a) in the case of an appeal under sub-paragraph (1) or (4), the notice under paragraph 40J(2) is given to the scheme organiser;
    - (b) in the case of an appeal under sub-paragraph (2), the closure notice is given;
    - (c) in the case of an appeal under sub-paragraph (3), the default notice is given.
  - (6) On an appeal under sub-paragraph (1) or (3)(a) which is notified to the tribunal, the tribunal may affirm or cancel the decision.
  - (7) On an appeal under sub-paragraph (2) or (3)(b) which is notified to the tribunal, the tribunal may—
    - (a) affirm or cancel the decision, or
    - (b) substitute for the decision another decision which HMRC had power to make.
  - (8) On an appeal under sub-paragraph (4) which is notified to the tribunal, the tribunal may—
    - (a) affirm the amount of the penalty decided, or
    - (b) substitute another amount for that amount.
  - (9) Subject to this paragraph and paragraph 40J, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to an appeal under this paragraph as they have effect in relation to an appeal against an assessment to corporation tax or, if the scheme organiser is not within the charge to corporation tax, income tax.”
- 118 (1) Paragraph 45 (power to require information) is amended as follows.
- (2) For sub-paragraph (1) substitute—
- “(1) An officer of Revenue and Customs may by notice require a person to provide the officer with any information—
- (a) which the officer reasonably requires for the performance of any functions of Her Majesty’s Revenue and Customs or an officer of Revenue and Customs under the SAYE code, and
  - (b) which the person to whom the notice is addressed has or can reasonably obtain.”
- (3) In sub-paragraph (2)(a)—
- (a) for sub-paragraph (i) substitute—
    - “(i) to check anything contained in a notice under paragraph 40A or a return under paragraph 40B

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or to check any information accompanying such a notice or return, or”, and”

- (b) in sub-paragraph (ii) after “scheme” insert “or any other person whose liability to tax the operation of a scheme is relevant to”.

119 After paragraph 47 insert—

*“Non-UK company reorganisation arrangements*

47A (1) For the purposes of the SAYE code a “non-UK company reorganisation arrangement” is an arrangement made in relation to a company under the law of a territory outside the United Kingdom—

- (a) which gives effect to a reorganisation of the company’s share capital by the consolidation of shares of different classes, or by the division of shares into shares of different classes, or by both of those methods, and  
(b) which is approved by a resolution of members of the company.

(2) A resolution does not count for the purposes of sub-paragraph (1)(b) unless the members who vote in favour of approving the arrangement represent more than 50% of the total voting rights of all the members having the right to vote on the issue.”

120 In paragraph 49 (index of defined expressions)—

- (a) omit the entry for “approved”, and  
(b) at the appropriate places insert—

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“non-UK company paragraph 47A”  
reorganisation arrangement

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“Schedule 3 SAYE option paragraph 1 and Part 8 of this Schedule”  
scheme

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*Other amendments: TCGA 1992*

121 TCGA 1992 is amended as follows.

122 (1) Section 105A (shares acquired on same day: election for alternative treatment) is amended as follows.

(2) For “approved-scheme” (in all places) substitute “tax-advantaged-scheme”.

(3) In subsection (1)(b)(ii) omit “approved”.

123 In section 105B (provision supplementary to section 105A) in subsections (7) and (8) for “approved-scheme” substitute “tax-advantaged-scheme”.

124 In section 238A (share schemes and share incentives) in subsection (2)(b) for “approved” substitute “Schedule 3”.

125 Part 2 of Schedule 7D (SAYE option schemes) is amended as follows.

126 In the title for “APPROVED” substitute “SCHEDULE 3”.

127 In paragraph 9 (introduction) in sub-paragraphs (1) and (2) omit “approved”.

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- 128 (1) Paragraph 10 (market value rule not to apply) is amended as follows.
- (2) In sub-paragraph (1)—
- (a) in paragraph (a)(i) for “an approved” substitute “a Schedule 3”, and
  - (b) in paragraph (b) for “approved” substitute “a Schedule 3 SAYE option scheme”.
- (3) For sub-paragraph (3) substitute—
- “(3) Sub-paragraph (3A) applies for the purposes of sub-paragraph (1)(b) if—
- (a) the SAYE option scheme is not to be a Schedule 3 SAYE option scheme by virtue of paragraph 40H or 40I of Schedule 3 to ITEPA 2003, and
  - (b) the option was granted before, but exercised at or after, the time mentioned in paragraph 40H(2)(a)(i) or (ii) or 40I(7)(a)(i) or (ii) of that Schedule (as the case may be).
- (3A) The scheme is to be taken still to be a Schedule 3 SAYE option scheme when the option is exercised.”

*Other amendments: ITEPA 2003, Part 4 of FA 2004, ITTOIA 2005 and CTA 2009*

- 129 ITEPA 2003 is amended as follows.
- 130 In section 227 (scope of Part 4) in subsection (4)(e) omit “approved”.
- 131 In section 417 (scope of Part 7) in subsection (2), in the entry for Chapter 7, omit “approved”.
- 132 In section 431A (provision relating to restricted securities) in subsection (2)(b) for “an approved” substitute “a Schedule 3”.
- 133 In section 473 (introduction to taxation of securities options) in subsection (4)(a) for “approved” substitute “Schedule 3”.
- 134 In section 476 (charge on occurrence of chargeable event) in subsection (6), in the entry for section 519, omit “approved”.
- 135 In section 549 (application of Chapter 11 of Part 7) in subsection (2)(b) omit “approved”.
- 136 (1) Section 554E (exclusions under Part 7A) is amended as follows.
- (2) In subsection (1)(b) for “an approved” substitute “a Schedule 3”.
- (3) In subsection (3)(a)(ii) and (b)(ii) for the first “an approved” substitute “a Schedule 3”.
- (4) In subsection (4)(a) and (b) for the second “approved” substitute “Schedule 3”.
- 137 In section 697 (PAYE: enhancing the value of an asset) in subsection (4)—
- (a) in paragraph (a) omit the words from “Schedule 3” to the second “or”,
  - (b) after paragraph (a) insert—
    - “(aa) any shares acquired by the employee under a scheme which is a Schedule 3 SAYE option scheme (see Schedule 3),”, and
  - (c) in paragraph (b) for “such a scheme” substitute “a scheme mentioned in any of the preceding paragraphs”.

- 138 In section 701 (PAYE: meaning of “asset”) in subsection (2)(c)—
- (a) in sub-paragraph (i) omit “Schedule 3 (approved SAYE option schemes) or”, and
  - (b) after sub-paragraph (i) insert—  
“(iza) any shares acquired by the employee under a scheme which is a Schedule 3 SAYE option scheme (see Schedule 3).”
- 139 In section 195 of FA 2004 (pensions: transfer of certain shares to be treated as payment of contribution) in subsection (5), in the definition of “SAYE option scheme”, omit “approved”.
- 140 (1) Section 94A of ITTOIA 2005 (costs of setting up SAYE option scheme or CSOP scheme) is amended as follows.
- (2) In subsection (1)—
    - (a) in paragraph (a) omit “that is approved by an officer of Revenue and Customs”, and
    - (b) omit paragraph (b) and the “and” before it.
  - (3) In subsection (2)—
    - (a) at the beginning of paragraph (a) insert “Schedule 3”,
    - (b) at the beginning of paragraph (b) insert “Schedule 4”, and
    - (c) omit the final sentence.
  - (4) In subsection (4) for “approval is given” (in both places) substitute “relevant date falls”.
  - (5) After subsection (4) insert—
    - “(4A) In subsection (4) “the relevant date”—
      - (a) in relation to a Schedule 3 SAYE option scheme, has the meaning given in paragraph 40A(6) of Schedule 3 to ITEPA 2003, and
      - (b) in relation to a Schedule 4 CSOP scheme, has the meaning given in paragraph 28A(6) of Schedule 4 to ITEPA 2003.”
- 141 (1) Section 703 of ITTOIA 2005 (SAYE interest: meaning of “certified SAYE savings arrangement”) is amended as follows.
- (2) In subsection (2)(b) for “an approved” substitute “a Schedule 3”.
  - (3) In subsection (3) for the definition of “SAYE option scheme” substitute—  
““Schedule 3 SAYE option scheme” has the meaning given in Schedule 3 to ITEPA 2003.”
- 142 (1) Section 999 of CTA 2009 (deduction for costs of setting up SAYE option scheme etc) is amended as follows.
- (2) In subsection (1)—
    - (a) in paragraph (a) omit “that is approved by an officer of Revenue and Customs”, and
    - (b) omit paragraph (b) and the “and” before it.
  - (3) In subsection (2)—
    - (a) at the beginning of paragraph (a) insert “Schedule 3”,

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- (b) at the beginning of paragraph (b) insert “Schedule 4”, and
- (c) omit the final sentence.

(4) In subsection (6) for “approval is given” (in all places) substitute “relevant date falls”.

(5) After subsection (6) insert—

“(6A) In subsection (6) “the relevant date”—

- (a) in relation to a Schedule 3 SAYE option scheme, has the meaning given in paragraph 40A(6) of Schedule 3 to ITEPA 2003, and
- (b) in relation to a Schedule 4 CSOP scheme, has the meaning given in paragraph 28A(6) of Schedule 4 to ITEPA 2003.”

*Other amendments: Individual Savings Account Regulations 1998 (S.I. 1998/1870)*

143 The Individual Savings Account Regulations 1998 are amended as follows.

144 In regulation 2 (interpretation) in paragraph (1)(a)—

- (a) omit the definition of “approved SAYE option scheme”, and
- (b) at the appropriate place insert—

““Schedule 3 SAYE option scheme” shall be construed in accordance with the SAYE code (see section 516(3) of ITEPA 2003);”.

145 In regulation 7 (qualifying investments) in paragraphs (2)(h)(i) and (10)(a) for “an approved” substitute “a Schedule 3”.

*Commencement and transitional provision*

146 This Part is treated as having come into force on 6 April 2014.

147 Paragraphs 148 to 157 below apply in relation to an SAYE option scheme established before 6 April 2014.

148 (1) If the scheme was an approved SAYE option scheme immediately before 6 April 2014, this paragraph applies to any provision which the scheme contains immediately before that date and which requires the approval or agreement of Her Majesty’s Revenue and Customs or an officer of Revenue and Customs to be obtained in relation to any matter.

(2) On and after 6 April 2014, the provision is to have effect without the requirement for the approval or agreement, unless the requirement reflects a requirement for approval or agreement set out in Schedule 3 to ITEPA 2003 (as amended by this Part).

149 (1) If the scheme was an approved SAYE option scheme immediately before 6 April 2014, the amendment made by paragraph 108 above has effect in relation to the scheme only if, and when, there is an alteration in a key feature of the scheme on or after that date.

(2) In sub-paragraph (1) “key feature” has the meaning given in paragraph 40B(8) of Schedule 3 to ITEPA 2003 (as inserted by paragraph 117 above).

150 If the scheme was an approved SAYE option scheme immediately before 6 April 2014, on and after that date the scheme has effect with any modifications needed to reflect the amendment made by paragraph 110 above.

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- 151 (1) This paragraph applies if, immediately before 6 April 2014, the scheme was an approved SAYE option scheme which contains provision authorised by paragraph 28(3) of Schedule 3 to ITEPA 2003.
- (2) On and after 6 April 2014, the scheme has effect with any modifications needed to reflect the amendments made by paragraph 111 above.
- 152 (1) The amendment made by paragraph 112 above has no effect in relation to share options granted before 6 April 2014 under the scheme.
- (2) If the scheme was an approved SAYE option scheme immediately before 6 April 2014, on and after that date the scheme has effect with any modifications needed to reflect the amendment made by paragraph 112 above (subject to sub-paragraph (1) of this paragraph).
- 153 (1) The amendments made by paragraph 113 above have no effect in a case where P ceases to hold the scheme-related employment before 6 April 2014.
- (2) If immediately before 6 April 2014 the scheme was an approved SAYE option scheme which contains provision authorised by paragraph 34(5) of Schedule 3 to ITEPA 2003, on and after that date the scheme has effect with any modifications needed to reflect the amendments made by paragraph 113 above (subject to sub-paragraph (1) of this paragraph).
- 154 (1) This paragraph applies if, immediately before 6 April 2014, the scheme was an approved SAYE option scheme which contains provision authorised by paragraph 37(1) of Schedule 3 to ITEPA 2003.
- (2) On and after 6 April 2014, the scheme has effect with any modifications needed to reflect the amendment made by paragraph 114(3) above.
- 155 (1) Paragraph 40A of Schedule 3 to ITEPA 2003 (as inserted by paragraph 117 above) has effect in relation to the scheme—
- (a) as if, at the end of sub-paragraph (1), the words “on or before 6 July 2015” were inserted,
  - (b) if the first date on which share options are granted under the scheme falls before 6 April 2014—
    - (i) as if, in sub-paragraph (3)(b), the reference to that date were a reference to 6 April 2014 and, accordingly, as if all references in paragraph 40A to the first grant date were references to 6 April 2014,
    - (ii) as if sub-paragraph (3)(b)(i) were omitted, and
    - (iii) as if, in sub-paragraph (3)(b)(ii), “otherwise” were omitted,
  - (c) as if sub-paragraph (5) were omitted, and
  - (d) as if, in sub-paragraph (6), the definitions of “the initial notification deadline” and “the relevant tax year” were omitted.
- (2) But the scheme cannot be a Schedule 3 SAYE option scheme if, before 6 April 2014, an application for its approval was refused or an officer of Revenue and Customs decided to withdraw its approval.
- (3) Sub-paragraph (2) is without prejudice to the outcome of any appeal under paragraph 41 or 44 of Schedule 3 to ITEPA 2003 against the refusal or decision to withdraw approval.

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- (4) The amendments made by this Part do not affect any right of appeal under paragraph 41 or 44 of Schedule 3 to ITEPA 2003 against a refusal or decision made before 6 April 2014 in relation to the scheme.
- (5) Sub-paragraphs (6) and (7) apply if a share option was granted before 6 April 2014 under the scheme at a time when the scheme was an approved SAYE option scheme.
- (6) On and after 6 April 2014, the SAYE code has effect in relation to the option as if it were granted under the scheme at a time when the scheme was a Schedule 3 SAYE option scheme (even if no notice is given under paragraph 40A of Schedule 3 to ITEPA 2003 in relation to the scheme or the scheme cannot be a Schedule 3 SAYE option scheme because of sub-paragraph (2) of this paragraph).
- (7) If no notice is given under paragraph 40A of Schedule 3 to ITEPA 2003 in relation to the scheme, paragraph 40B of that Schedule (as inserted by paragraph 117 above) is to apply in relation to the scheme despite no notice being given; and, for this purpose, the relevant date is to be taken to be 6 April 2014.
- (8) Sub-paragraph (9) applies in relation to a share option granted before 6 April 2014 under the scheme at a time when the scheme was an approved SAYE option scheme if—
- (a) no notice is given under paragraph 40A of Schedule 3 to ITEPA 2003 in relation to the scheme or the scheme cannot be a Schedule 3 SAYE option scheme because of sub-paragraph (2) of this paragraph, and
  - (b) the option is exercised on or after 6 April 2014.
- (9) The scheme is to be taken to be a Schedule 3 SAYE option scheme at the time of the exercise of the option for the purposes of the following provisions in their application to the option—
- (a) section 519 of ITEPA 2003 (exemption in respect of exercise of share option), and
  - (b) paragraph 10(1)(b) of Schedule 7D to TCGA 1992 (market value rule not to apply).
- (10) In relation to the scheme—
- (a) paragraph 40F of Schedule 3 to ITEPA 2003 (as inserted by paragraph 117 above) has effect as if for sub-paragraph (2) there were substituted—
 

“(2) HMRC may enquire into the scheme if HMRC give notice to the scheme organiser of HMRC’s intention to do so no later than 6 July 2016.”, and
  - (b) the cases covered by paragraphs 40F(4)(b), 40H(1)(a)(ii) and 40I(1)(a)(ii) of Schedule 3 to ITEPA 2003 (as inserted by paragraph 117 above) include cases in which requirements of Parts 2 to 7 of that Schedule were not met before 6 April 2014.
- 156 If the scheme was an approved SAYE option scheme before 6 April 2014, the amendments made by this Part do not affect the deductions which may be made in relation to the scheme under section 94A of ITTOIA 2005 or section 999 of CTA 2009 (deduction for costs of setting up scheme) if they would otherwise do so.
- 157 The amendments made by paragraph 118 above do not affect a notice given in relation to the scheme under paragraph 45 of Schedule 3 to ITEPA 2003 before 6 April 2014.