

Changes to legislation: Income Tax (Earnings and Pensions) Act 2003, PART 10 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

SCHEDULE 2

^{F1} ... SHARE INCENTIVE PLANS

Textual Amendments

- F1** Word in Sch. 2 title omitted (6.4.2014) by virtue of [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 14](#), 89 (with [Sch. 8 paras. 90-96](#))

^{F1}PART 10

NOTIFICATION OF PLANS, ANNUAL RETURNS AND ENQUIRIES

Textual Amendments

- F1** Sch. 2 Pt. 10 substituted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 28](#), 89 (with [Sch. 8 paras. 90-96](#))

Notice of SIP to be given to HMRC

- 81A (1) For a SIP to be a Schedule 2 SIP, notice of the SIP must be given to Her Majesty's Revenue and Customs ("HMRC").
- (2) The notice must—
- (a) be given by the company,
 - (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 9 of this Schedule are met in relation to the SIP, and
 - (b) if the declaration is made after the first date on which awards of shares are made under the SIP ("the first award date"), that those requirements—
 - (i) were met in relation to those awards of shares, and
 - (ii) have otherwise been met in relation to the SIP at all times on or after the first award date when shares appropriated to, or acquired on behalf of, individuals under the SIP have been held under the SIP.
- (4) If notice is given under this paragraph in relation to a SIP, for the purposes of the SIP code the SIP is to be a Schedule 2 SIP at all times on and after the relevant date (but not before that date).

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- (5) But if the notice is given after the initial notification deadline, the SIP is to be a Schedule 2 SIP only from the beginning of the relevant tax year.
- [^{F2}(5A) Sub-paragraph (5) does not apply if the company satisfies HMRC (or, on an appeal under paragraph 81K, the tribunal) that there is a reasonable excuse for failing to give notice on or before the initial notification deadline.
- (5B) Paragraph 81C(9) (what constitutes a reasonable excuse) applies for the purposes of sub-paragraph (5A).
- (5C) Where HMRC are required under sub-paragraph (5A) to consider whether there was a reasonable excuse, HMRC must notify the company of their decision within the period of 45 days beginning with the day on which HMRC received the company's request to consider the excuse.
- (5D) Where HMRC are required to notify the company as specified in sub-paragraph (5C) but do not do so—
- (a) HMRC are to be treated as having decided that there was no reasonable excuse, and
 - (b) HMRC must notify the company of the decision which they are treated as having made.]

(6) For the purposes of this Part—

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

“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 award date, the first award date, and

“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.

Textual Amendments

- F2** Sch. 2 para. 81A(5A)-(5D) inserted (with effect in accordance with Sch. 3 para. 3(4) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 3 para. 3\(2\)](#)

Annual returns

- 81B (1) This paragraph applies if notice is given in relation to a SIP under paragraph 81A.
- (2) The company 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 81A(5) applies in relation to the SIP, 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—

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- (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 SIP, or
 - (b) any other person whose liability to tax the operation of the SIP is relevant to.
 - (6) If during a tax year an alteration is made in a key feature of—
 - (a) the SIP, or
 - (b) the plan trust,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 that the alteration has not caused the requirements of Parts 2 to 9 of this Schedule not to be met in relation to the SIP.
 - (8) For the purposes of sub-paragraph (6) a “key feature” of a SIP or plan trust is a provision of the SIP or plan trust which is necessary in order for the requirements of Parts 2 to 9 of this Schedule to be met in relation to the SIP.
 - (9) A return is not required for any tax year following that in which the termination condition is met in relation to the SIP.
 - (10) For the purposes of this Part “the termination condition” is met in relation to a SIP when—
 - (a) a plan termination notice has been issued in relation to it under paragraph 89, and
 - (b) all the requirements under paragraphs 56(3), 68(4)(c) and 90 have been met by the trustees.
 - (11) If the company 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 company must give an amended return correcting the position to HMRC without delay.
- 81C (1) This paragraph applies if the company 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 81B(4)(b) (“the date for delivery”).
- (2) The company is liable for a penalty of £100.
 - (3) If the company's failure continues after the end of the period of 3 months beginning with the date for delivery, the company is liable for a further penalty of £300.

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- (4) If the company's failure continues after the end of the period of 6 months beginning with the date for delivery, the company is liable for a further penalty of £300.
- (5) The company is liable for a further penalty under this sub-paragraph if—
 - (a) the company'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 company specifying the period in respect of which the penalty is payable.
 (The company 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
 - (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 company satisfies HMRC (or, on an appeal under paragraph 81K, 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 company's control,
 - (b) where the company relies on any other person to do anything, that is not a reasonable excuse unless the company took reasonable care to avoid the failure, and
 - (c) where the company had a reasonable excuse for the failure but the excuse ceased, the company is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

Notices and returns to be given electronically etc

- 81D (1) A notice under paragraph 81A, and any information accompanying the notice, must be given electronically.
- (2) A return under paragraph 81B, and any information accompanying the return, must be given electronically.
- (3) But, if HMRC consider it appropriate to do so, HMRC may allow the company 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.
- 81E (1) This paragraph applies if a return under paragraph 81B, or any information accompanying such a return—

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- (a) is given otherwise than in accordance with paragraph 81D, or
 - (b) contains a material inaccuracy—
 - (i) which is careless or deliberate, or
 - (ii) which is not corrected as required by paragraph 81B(11).
- (2) The company 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 company to take reasonable care.

Enquiries

- 81F (1) This paragraph applies if notice is given in relation to a SIP under paragraph 81A.
- (2) HMRC may enquire into the SIP if HMRC give notice to the company 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 81A 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 SIP if HMRC give notice to the company of HMRC's intention to do so no later than 12 months after the date on which a declaration within paragraph 81B(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 9 of this Schedule—
- (a) are not met in relation to the SIP, or
 - (b) have not been met in relation to the SIP.
- (5) HMRC may enquire into the SIP if HMRC give notice to the company 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 has been met in relation to the SIP.
- 81G (1) An enquiry under paragraph 81F(2), (3) or (5) is completed when HMRC give the company a notice (a “closure notice”) stating—
- (a) that HMRC have completed the enquiry, and
 - (b) that—
 - (i) paragraph 81H is to apply,
 - (ii) paragraph 81I is to apply, or
 - (iii) neither paragraph 81H nor paragraph 81I is to apply.
- (2) If the company receives notice under paragraph 81F(2), (3) or (5), the company 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.

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- 81H (1) This paragraph applies if HMRC decide—
- (a) that requirements of Parts 2 to 9 of this Schedule—
 - (i) are not met in relation to the SIP, or
 - (ii) have not been met in relation to the SIP, and
 - (b) that the situation is, or was, so serious that this paragraph should apply.
- (2) If this paragraph applies—
- (a) the SIP is not to be a Schedule 2 SIP 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 company is liable for a penalty of an amount decided by HMRC.
- (3) Sub-paragraph (2)(a) does not affect the operation of the SIP code in relation to shares appropriated to, or acquired on behalf of, an individual under the SIP before the time mentioned in sub-paragraph (2)(a)(i) or (ii) (as the case may be).
- (4) In particular, if the SIP was a Schedule 2 SIP when the shares were appropriated to, or acquired on behalf of, the individual, the SIP is to continue to be a Schedule 2 SIP in relation to those shares.
- (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 participants in the SIP 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 SIP having been a Schedule 2 SIP 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-paragraphs (3) and (4).
- (7) In this paragraph “relevant time” means any time before the giving of the closure notice when requirements of Parts 2 to 9 of this Schedule were not met in relation to the SIP.
- 81I (1) This paragraph applies if HMRC decide—
- (a) that requirements of Parts 2 to 9 of this Schedule—
 - (i) are not met in relation to the SIP, or
 - (ii) have not been met in relation to the SIP, but
 - (b) that the situation is not, or was not, so serious that paragraph 81H should apply.
- (2) If this paragraph applies, the company—
- (a) is liable for a penalty of an amount decided by HMRC, and
 - (b) must, no later than 90 days after the relevant day, secure that the requirements of Parts 2 to 9 of this Schedule are met in relation to the SIP.
- (3) The penalty under sub-paragraph (2)(a) must not exceed £5,000.
- (4) In sub-paragraph (2)(b) “the relevant day” means—

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- (a) the last day of the period in which notice of an appeal under paragraph 81K(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 SIP before the giving of the closure notice or is met before the end of the 90 day period mentioned in sub-paragraph (2)(b).
- (6) If the company fails to comply with sub-paragraph (2)(b), HMRC may give the company a notice stating that that is the case (a “default notice”).
- (7) If the company is given a default notice—
 - (a) the SIP is not to be a Schedule 2 SIP 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 company is liable for a further penalty of an amount decided by HMRC.
- (8) Sub-paragraph (7)(a) does not affect the operation of the SIP code in relation to shares appropriated to, or acquired on behalf of, an individual under the SIP before the time mentioned in sub-paragraph (7)(a)(i) or (ii) (as the case may be).
- (9) In particular, if the SIP was a Schedule 2 SIP when the shares were appropriated to, or acquired on behalf of, the individual, the SIP is to continue to be a Schedule 2 SIP in relation to those shares.
- (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 participants in the SIP 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 SIP having been a Schedule 2 SIP at any relevant time before the time mentioned in sub-paragraph (7)(a)(i) or (ii) (as the case may be).
- (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-paragraphs (8) and (9).
- (12) In this paragraph “relevant time” means any time before the giving of the default notice when requirements of Parts 2 to 9 of this Schedule were not met in relation to the SIP.

Assessment of penalties

- 81J
- (1) This paragraph applies if the company is liable for a penalty under this Part.
 - (2) HMRC must assess the penalty and notify the company 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 company becomes liable for the penalty.
 - (4) In the case of a penalty under paragraph 81E(1)(b), the assessment must be made no later than—

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- (a) 12 months after the date on which HMRC become aware of the inaccuracy, and
 - (b) 6 years after the date on which the company becomes liable for the penalty.
- (5) In the case of a penalty under paragraph 81H(2)(b) or 81I(2)(a) or (7)(b) where notice of appeal is given under paragraph 81K(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 company, or
 - (b) if notice of appeal is given against the penalty under paragraph 81K(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 company 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.

Appeals

81F³(A1) The company may appeal against a decision of HMRC under paragraph 81A(5A) that there was no reasonable excuse for its failure to give notice on or before the initial notification deadline.]

- (1) The company may appeal against a decision of HMRC that the company is liable for a penalty under paragraph 81C or 81E.
- (2) The company may appeal against—
 - (a) a decision of HMRC mentioned in paragraph 81H(1) or a decision of HMRC to specify, or not to specify, a relevant time in the closure notice;
 - (b) a decision of HMRC mentioned in paragraph 81I(1).
- (3) The company may appeal against a decision of HMRC—
 - (a) to give the company a default notice under paragraph 81I;
 - (b) to specify, or not to specify, a relevant time in the default notice.
- (4) The company may appeal against a decision of HMRC as to the amount of a penalty payable by the company under this Part.
- (5) The company may appeal against a decision of an officer of Revenue and Customs to give a direction under section 998 of CTA 2009 (withdrawal of corporation tax deductions in relation to a Schedule 2 SIP).
- (6) Notice of appeal must be given to HMRC no later than 30 days after the date on which—
 - [^{F4}(za) in the case of an appeal under sub-paragraph (A1), notice of HMRC's decision is given to the company;]
 - (a) in the case of an appeal under sub-paragraph (1) or (4), the notice under paragraph 81J(2) is given to the company;
 - (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;

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- (d) in the case of an appeal under sub-paragraph (5), notice of the officer's decision is given to the company.
- (7) On an appeal under sub-paragraph [F5(A1)] (1), (3)(a) or (5) which is notified to the tribunal, the tribunal may affirm or cancel the decision.
- (8) 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.
- (9) 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.
- (10) Subject to this paragraph and paragraph 81J, 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 company is not within the charge to corporation tax, income tax.]

Textual Amendments

- F3** Sch. 2 para. 81K(A1) inserted (with effect in accordance with Sch. 3 para. 3(4) of the amending Act) by Finance Act 2016 (c. 24), **Sch. 3 para. 3(3)(a)**
- F4** Sch. 2 para. 81K(6)(za) inserted (with effect in accordance with Sch. 3 para. 3(4) of the amending Act) by Finance Act 2016 (c. 24), **Sch. 3 para. 3(3)(b)**
- F5** Word in Sch. 2 para. 81K(7) inserted (with effect in accordance with Sch. 3 para. 3(4) of the amending Act) by Finance Act 2016 (c. 24), **Sch. 3 para. 3(3)(c)**

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 452(2)(aa) inserted by [2013 c. 29 Sch. 23 para. 11](#)
- s. 707A inserted by [2024 c. 3 s. 36\(4\)](#)