

Status: Point in time view as at 21/07/2008.

Changes to legislation: Income Tax (Earnings and Pensions) Act 2003, Chapter 2 is up to date with all changes known to be in force on or before 17 July 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)



Income Tax (Earnings and Pensions) Act 2003

2003 CHAPTER 1

PART 7

[^{F1}EMPLOYMENT INCOME: INCOME AND EXEMPTIONS RELATING TO SECURITIES]

[^{F2}CHAPTER 2

RESTRICTED SECURITIES

Textual Amendments

- F2** Pt. 7 Ch. 2 substituted (1.9.2003 with effect in accordance with Sch. 22 para. 3(2)-(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 3\(1\)](#); S.I. 2003/1997, art. 2

Introduction

422 Application of this Chapter

This Chapter applies to employment-related securities if they are—

- (a) restricted securities, or
- (b) a restricted interest in securities,

at the time of the acquisition.

Modifications etc. (not altering text)

- C2** [S. 422](#) modified (with application in accordance with Sch. 2 para. 4(4) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 2 para. 4\(4\)](#)

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423 “Restricted securities” and “restricted interest in securities”

- (1) For the purposes of this Chapter employment-related securities are restricted securities or a restricted interest in securities if—
 - (a) there is any contract, agreement, arrangement or condition which makes provision to which any of subsections (2) to (4) applies, and
 - (b) the market value of the employment-related securities is less than it would be but for that provision.
- (2) This subsection applies to provision under which—
 - (a) there will be a transfer, reversion or forfeiture of the employment-related securities, or (if the employment-related securities are an interest in securities) of the interest or the securities, if certain circumstances arise or do not arise,
 - (b) as a result of the transfer, reversion or forfeiture the person by whom the employment-related securities are held will cease to be beneficially entitled to the employment-related securities, and
 - (c) that person will not be entitled on the transfer, reversion or forfeiture to receive in respect of the employment-related securities an amount of at least their market value (determined as if there were no provision for transfer, reversion or forfeiture) at the time of the transfer, reversion or forfeiture.
- (3) This subsection applies to provision under which there is a restriction on—
 - (a) the freedom of the person by whom the employment-related securities are held to dispose of the employment-related securities or proceeds of their sale,
 - (b) the right of that person to retain the employment-related securities or proceeds of their sale, or
 - (c) any other right conferred by the employment-related securities,
 (not being provision to which subsection (2) applies).
- (4) This subsection applies to provision under which the disposal or retention of the employment-related securities, or the exercise of a right conferred by the employment-related securities, may result in a disadvantage to—
 - (a) the person by whom the employment-related securities are held,
 - (b) the employee (if not the person by whom they are held), or
 - (c) any person connected with the person by whom they are held or with the employee,
 (not being provision to which subsection (2) or (3) applies).

424 Exceptions

- [^{F3}(1) Employment-related securities are not restricted securities or a restricted interest in securities by reason only that any one or more of the following is the case—
 - (a) the employment-related securities (or the securities in which they are an interest) are unpaid or partly paid shares which may be forfeited for non-payment of calls and there is no restriction on the meeting of calls by the person by whom they are held, [^{F4}or]
 - (b) that person may be required to offer for sale or transfer the employment-related securities on the employee ceasing, as a result of misconduct, to be employed by the employer or a person connected with the employer, or
 - ^{F5}(c)]

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[^{F6}(2) Subsection (1) does not apply if the main purpose (or one of the main purposes) of the arrangements under which the right or opportunity to acquire the employment-related securities is made available is the avoidance of tax or national insurance contributions.]

Textual Amendments

- F3** S. 424 renumbered as s. 424(1) (with effect in accordance with Sch. 2 para. 4(4) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 2 para. 4\(1\)](#)
- F4** Word in s. 424(1)(a) inserted (with effect in accordance with Sch. 2 para. 4(4) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 2 para. 4\(2\)\(a\)](#)
- F5** S. 424(1)(c) repealed (with effect in accordance with Sch. 2 para. 4(4) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 2 para. 4\(2\)\(b\)](#), [Sch. 11 Pt. 2\(1\)](#)
- F6** S. 424(2) inserted (with effect in accordance with Sch. 2 para. 4(4) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 2 para. 4\(3\)](#)

Tax exemption on acquisition

425 No charge in respect of acquisition in certain cases

- (1) Subsection (2) applies if the employment-related securities—
- (a) are restricted securities, or a restricted interest in securities, by virtue of subsection (2) of section 423 (provision for transfer, reversion or forfeiture) at the time of the acquisition, and
 - (b) will cease to be restricted securities, or a restricted interest in securities, by virtue of that subsection within 5 years after the acquisition (whether or not they may remain restricted securities or a restricted interest in securities by virtue of the application of subsection (3) or (4) of that section).
- (2) No liability to income tax arises in respect of the acquisition, except as provided by—
- (a) Chapter 3 of this Part (acquisition by conversion),
 - (b) Chapter 3C of this Part (acquisition for less than market value), or
 - (c) Chapter 5 of this Part (acquisition pursuant to securities option).
- (3) But the employer and the employee may elect that subsection (2) is not to apply to the employment-related securities.
- (4) An election under subsection (3)—
- (a) is to be made by agreement by the employer and the employee, and
 - (b) is irrevocable.
- (5) Such an agreement—
- (a) must be made in a form approved by [^{F7}the Commissioners for Her Majesty's Revenue and Customs], and
 - (b) may not be made more than 14 days after the acquisition.

Textual Amendments

- F7** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(2\)](#); S.I. 2005/1126, art. 2(2)(h)

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Tax charge on post-acquisition chargeable events

426 Charge on occurrence of chargeable event

- [^{F8}(1) If a chargeable event occurs in relation to the employment-related securities, the taxable amount counts as employment income of the employee for the relevant tax year.
- (2) For this purpose—
- (a) “chargeable event” has the meaning given by section 427,
 - (b) “the taxable amount” is the amount determined under section 428, and
 - (c) “the relevant tax year” is the tax year in which the chargeable event occurs.
- (3) Relief may be available under section 428A (relief for secondary Class 1 contributions met by employee) against an amount counting as employment income under this section.]
- (5) This section is subject to section 429 (case outside charge under this section).

Textual Amendments

- F8** S. 426(1)-(3) substituted for s. 426(1)-(4) (1.9.2004) by [Finance Act 2004 \(c. 12\), s. 85\(2\), Sch. 16 para. 1\(2\)](#); S.I. 2004/1945, art. 2

427 Chargeable events

- (1) This section applies for the purposes of section 426 (charge on occurrence of chargeable event).
- (2) Any of the events mentioned in subsection (3) is a “chargeable event” in relation to the employment-related securities.
- (3) The events are—
 - (a) the employment-related securities ceasing to be restricted securities, or a restricted interest in securities, in circumstances in which an associated person is beneficially entitled to the employment-related securities after the event,
 - (b) the variation of any restriction relating to the employment-related securities in such circumstances (without the employment-related securities ceasing to be restricted securities or a restricted interest in securities), and
 - (c) the disposal for consideration of the employment-related securities, or any interest in them, by an associated person otherwise than to another associated person (at a time when they are still restricted securities or a restricted interest in securities).
- (4) For the purposes of this Chapter there is a variation of a restriction relating to the employment-related securities if any restriction in relation to them is removed or varied.

428 ^{F9}Amount of charge

- (1) The taxable amount for the purposes of section 426 (charge on occurrence of chargeable event) is—

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$UMV \times (IUPPCPOP)CE$

(2) UMV is what would be the market value of the employment-related securities immediately after the chargeable event but for any restrictions.

(3) IUP is—

$IUMVDAIUMV$

where—

IUMV is what would have been the market value of the employment-related securities at the time of the acquisition but for any restrictions, and

DA is the total of any deductible amounts.

(4) PCP is the aggregate of the result of the application of the formula—

$IUPPCPOP$

on each previous event (if any) occurring since the acquisition that was a chargeable event for the purposes of section 426 in relation to the employment-related securities (and so is nil if there has not been such a previous event).

(5) OP is—

$UMVAMVUMV$

where AMV is the actual market value of the employment-related securities immediately after the chargeable event.

(6) CE is any expenses incurred by the holder of the employment-related securities in connection with—

- (a) the employment-related securities ceasing to be restricted securities or a restricted interest in securities,
- (b) the variation of a restriction relating to the employment-related securities, or
- (c) the disposal of the employment-related securities,

together (if the chargeable event is one within section 427(3)(a) or (b) (lifting of restrictions and variation of restriction)) with any consideration given for the employment-related securities ceasing to be restricted securities or a restricted interest in securities or the variation of a restriction relating to the employment-related securities.

(7) For the purposes of this section each of the following is a “deductible amount”—

- (a) the amount of any consideration given for the acquisition of the employment-related securities,
- (b) any amount that constituted earnings from the employee’s employment under Chapter 1 of Part 3 (earnings) in respect of the acquisition of the employment-related securities [^{F10}(other than an amount of exempt income)],
- (c) any amount that counted as employment income in relation to the employment-related securities under Chapter 2 or 4 of this Part as originally enacted,
- (d) if the employment-related securities were acquired on a conversion of other employment-related securities, any amount that counted as employment income of the employee under Chapter 3 of this Part (including that Chapter as originally enacted) (convertible securities) by reason of the conversion, and

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- (e) if the acquisition of the employment-related securities was pursuant to a securities option, any amount that counted as employment income of the employee under section 476 (or section 476 or 477 as originally enacted) (acquisition of securities pursuant to securities option) by reason of the acquisition.
- (8) If the employment-related securities are convertible securities, or an interest in convertible securities, their market value is to be determined for the purposes of this section as if they were not.
- (9) Where the chargeable event is one within section 427(3)(c) (disposal) and CD is less than AMV, the taxable amount for the purposes of section 426 is the amount determined under subsection (1) multiplied by—

CDAMV

where—

CD is the consideration given for the employment-related securities, and

AMV is the actual market value of the employment-related securities immediately after the chargeable event.

- [^{F11}(10) But subsection (9) does not apply if something which affects the employment-related securities has been done (at or before the time of the chargeable event) as part of a scheme or arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax or national insurance contributions.]

Textual Amendments

- F9** The words "(other than an amount of exempt income)" inserted at the end of s. 428(2)(b) as originally enacted (with effect in accordance with s. 49(10) of the amending Act) by [Finance Act 2008 \(c. 9\), s. 49\(3\)](#)
- F10** Words in s. 428(7)(b) inserted (with effect in accordance with s. 49(11) of the amending Act) by [Finance Act 2008 \(c. 9\), s. 49\(4\)](#)
- F11** S. 428(10) inserted (with effect in accordance with Sch. 2 para. 5(2) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), Sch. 2 para. 5](#)

[^{F12}428A] Relief for secondary Class 1 contributions met by employee

- (1) Relief is available under this section against an amount counting as employment income under section 426 ("the employment income amount") if—
- (a) an agreement having effect under paragraph 3A of Schedule 1 to the Contributions and Benefits Act has been entered into allowing the secondary contributor to recover from the employee the whole or part of any secondary Class 1 contribution in respect of that amount, or
 - (b) an election having effect under paragraph 3B of that Schedule is in force which has the effect of transferring to the employee the whole or part of the liability to pay secondary Class 1 contributions in respect of that amount.
- (2) The amount of the relief is the total of—
- (a) any amount that under the agreement referred to in subsection (1)(a) is recovered in respect of the employment income amount by the secondary

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- contributor before 5th June in the tax year following that in which the chargeable event occurs, and
- (b) the amount of any liability in respect of the employment income amount that, by virtue of the election referred to in subsection (1)(b), has become the employee's liability.
- (3) If notice of withdrawal of approval of the election is given, the amount of the liability referred to in subsection (2)(b) is limited to the amount met before 5th June in the tax year following that in which the chargeable event occurs.
- (4) Relief under this section is given by way of deduction from the amount otherwise counting as employment income.
- (5) Relief under this section does not affect the amount to be taken into account—
- (a) as employment income in determining contributions payable under the Contributions and Benefits Act, or
- (b) as relevant employment income for the purposes of paragraph 3A or 3B of Schedule 1 to that Act.
- (6) In this section—
- “approval”, in relation to an election, means approval by [^{F13}an officer of Revenue and Customs] under paragraph 3B of Schedule 1 to the Contributions and Benefits Act, and
- “secondary contributor” has the same meaning as in that Act (see section 7).]

Textual Amendments

- F12** S. 428A inserted (1.9.2004) by [Finance Act 2004 \(c. 12\)](#), s. 85(2), [Sch. 16 para. 1\(3\)](#); S.I. 2004/1945, art. 2
- F13** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)

429 Case outside charge under section 426

- (1) Section 426 (charge on occurrence of chargeable event) does not apply if—
- (a) the employment-related securities are shares (or an interest in shares) in a company of a class,
- (b) the provision by virtue of which the employment-related securities are restricted securities, or a restricted interest in securities, applies to all the company's shares of the class,
- [^{F14}(ba) subsection (1A) is satisfied,]
- (c) all the company's shares of the class (other than the employment-related securities) are affected by an event similar to that which is a chargeable event in relation to the employment-related securities, and
- (d) subsection (3) or (4) is satisfied.
- (1A) [^{F15}This subsection is satisfied unless something which affects the employment-related securities has been done (at or before the time when section 426 would apply) as part of a scheme or arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax or national insurance contributions.]

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- (2) For the purposes of subsection (1)(c) shares are affected by an event similar to that which is a chargeable event in relation to the employment-related securities—
- (a) in the case of a chargeable event within section 427(3)(a) (lifting of restrictions), if the provision mentioned in subsection (1)(b) ceases to apply to them,
 - (b) in the case of a chargeable event within section 427(3)(b) (variation of restriction), if that provision is varied in relation to them in the same way as in relation to the employment-related securities, or
 - (c) in the case of a chargeable event within section 427(3)(c) (disposal), if they are disposed of.
- (3) This subsection is satisfied if, immediately before the event that would be a chargeable event, the company is employee-controlled by virtue of holdings of shares of the class.
- (4) This subsection is satisfied if, immediately before that event, the majority of the company's shares of the class are not [^{F16}employment-related securities.]

^{F17}(5)

Textual Amendments

- F14** S. 429(1)(ba) inserted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), **ss. 86(2)(a)(3)(8)**, 86(1)
- F15** S. 429(1A) substituted (with effect in accordance with Sch. 2 para. 6(2) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **Sch. 2 para. 6**
- F16** Words in s. 429(4) substituted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), **ss. 86(2)(a)(5)(8)**, 86(1)
- F17** S. 429(5) repealed (with effect in accordance with s. 86(8) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 2(11)**

430 Election for outstanding restrictions to be ignored

- (1) The employer and the employee may elect that—
- (a) on a chargeable event the taxable amount for the purposes of section 426 is to be determined by applying section 428(1) as if it did not include a reference to OP, and
 - (b) sections 426 to 429 are not to apply to the employment-related securities after that chargeable event.
- (2) An election under this section—
- (a) is to be made by agreement by the employer and the employee, and
 - (b) is irrevocable.
- (3) Such an agreement—
- (a) must be made in a form approved by [^{F7}the Commissioners for Her Majesty's Revenue and Customs] , and
 - (b) may not be made more than 14 days after the chargeable event.

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Textual Amendments

- F7** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(2\)](#); S.I. 2005/1126, art. 2(2)(h)

431 Election for full or partial disapplication of this Chapter

- (1) The employer and the employee may elect in relation to employment-related securities which are restricted securities or a restricted interest in securities that—
 - (a) for the relevant tax purposes their market value at the time of the acquisition is to be calculated as if they were not, and
 - (b) sections 425 to 430 are not to apply to the employment-related securities.
- (2) Or the employer and the employee may elect in relation to employment-related securities which are restricted securities or a restricted interest in securities that—
 - (a) for the relevant tax purposes their market value at the time of the acquisition is to be calculated, and
 - (b) sections 425 to 430 are to apply to the employment-related securities, as if any specified restriction did not apply to the employment-related securities.
- (3) For the purposes of subsections (1) and (2) “the relevant tax purposes” are—
 - (a) determining any amount that is to constitute earnings from the employment under Chapter 1 of Part 3 (earnings),
 - (b) determining the amount of any gain realised on the occurrence of an event that is a chargeable event by virtue of section 439(3)(a) (conversion),
 - (c) operating Chapter 3C of this Part (acquisition of securities for less than market value), and
 - (d) determining any amount that counts as employment income of the employee under Chapter 5 of this Part (securities acquired pursuant to securities option).
- (4) An election under this section—
 - (a) is to be made by agreement by the employer and the employee, and
 - (b) is irrevocable.
- (5) Such an agreement—
 - (a) must be made in a form approved by [^{F7}the Commissioners for Her Majesty’s Revenue and Customs] and
 - (b) may not be made more than 14 days after the acquisition.

Textual Amendments

- F7** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(2\)](#); S.I. 2005/1126, art. 2(2)(h)

Modifications etc. (not altering text)

- C3** S. 431 applied (with modifications) (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 91\(2\)](#)

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[^{F18}431A] Shares under approved plan or scheme

- (1) Where employment-related securities are restricted securities or a restricted interest in securities, the employer and the employee are to be treated as making an election under section 431(1) in relation to the employment-related securities if they are shares, or an interest in shares, to which this subsection applies.
- (2) Subsection (1) applies to—
 - (a) shares awarded or acquired under an approved share incentive plan (within the meaning of Chapter 6 of this Part) in circumstances in which (in accordance with section 490) no liability to income tax arises,
 - (b) shares acquired by the exercise of a share option granted under an approved SAYE option scheme (within the meaning of Chapter 7 of this Part) in circumstances in which (in accordance with section 519) no liability to income tax arises,
 - (c) shares acquired by the exercise of a share option granted under an approved CSOP scheme (within the meaning of Chapter 8 of this Part) in circumstances in which (in accordance with section 524) no liability to income tax arises, and
 - (d) shares acquired by the exercise of a qualifying option within the meaning of section 527(4) (enterprise management incentives) in circumstances in which (in accordance with section 530) no liability to income tax arises.]

Textual Amendments

F18 S. 431A inserted (18.6.2004 with effect in accordance with s. 88(11)-(13) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 88\(3\)](#)

[^{F19}431B] Securities acquired for purpose of avoidance

Where employment-related securities are restricted securities or a restricted interest in securities, the employer and the employee are to be treated as making an election under section 431(1) in relation to the employment-related securities if the main purpose (or one of the main purposes) of the arrangements under which the right or opportunity to acquire the employment-related securities is made available is the avoidance of tax or national insurance contributions.]

Textual Amendments

F19 S. 431B inserted (with effect in accordance with Sch. 2 para. 7(2) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), Sch. 2 para. 7\(1\)](#)

432 Definitions

- (1) In this Chapter—
 - “interest”, in relation to securities,
 - “securities”,
 - “securities option”, and
 - “shares”,
 have the meaning indicated in section 420.

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- (2) In this Chapter “market value” has the meaning indicated in section 421(1).
- (3) For the purposes of this Chapter sections 421(2) and 421A apply for determining the amount of the consideration given for anything and section 421I applies for determining the amount of the consideration given for the acquisition of employment-related securities.
- (4) In this Chapter—
 - “the acquisition”,
 - “the employee” (except in section 429),
 - “the employer”,
 - “the employment”, and
 - “employment-related securities”,have the meaning indicated in section 421B(8).
- (5) In this Chapter “associated person” has the meaning indicated in section 421C.
- (6) In this Chapter—
 - “associated company”, and
 - “employee-controlled”,have the meaning indicated in section 421H.
- (7) In this Chapter—
 - “restricted interest in securities”, and
 - “restricted securities”,have the meaning indicated in sections 423 and 424.
- (8) In this Chapter “restriction”, in relation to securities or an interest in securities, means provision relating to the securities or interest which is made by any contract, agreement, arrangement or condition and to which any of subsections (2) to (4) of section 423 applies.
- (9) In this Chapter “variation”, in relation to a restriction, has the meaning indicated in section 427(4).
- (10) In this Chapter “convertible securities” has the same meaning as in Chapter 3 of this Part (see section 436).]

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