



# Income Tax (Earnings and Pensions) Act 2003

## 2003 CHAPTER 1

### PART 7

[<sup>F1</sup>EMPLOYMENT INCOME: INCOME AND EXEMPTIONS RELATING TO SECURITIES]

### [<sup>F2</sup>CHAPTER 3A

SECURITIES WITH ARTIFICIALLY DEPRESSED MARKET VALUE

#### Textual Amendments

- F2** Pt. 7 Ch. 3A inserted (16.4.2003 with effect in accordance with Sch. 22 para. 5(2)-(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 5\(1\)](#)

#### *Introduction*

#### **446A Application of this Chapter**

- (1) This Chapter applies in certain cases where the market value of employment-related securities (or other relevant securities or interests in securities) is reduced by things done otherwise than for genuine commercial purposes.
- (2) The following are among the things that are, for the purposes of this Chapter, done otherwise than for genuine commercial purposes—
  - (a) anything done 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, and

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- (b) any transaction between companies which are members of the same group on terms which are not such as might be expected to be agreed between persons acting at arm's length (other than a payment for group relief).
- (3) In subsection (2)(b)—
  - (a) “group” means a company and its 51% subsidiaries, and
  - (b) “group relief” has the same meaning as in section 402(6) of ICTA.

### *Tax charge on acquisition*

#### **446B Charge on acquisition**

- (1) This section applies where the market value of employment-related securities at the time of the acquisition has been reduced by at least 10% as a result of things done otherwise than for genuine commercial purposes within the period of 7 years ending with the acquisition.
- (2) The taxable amount determined under section 446C counts as employment income of the employee for the tax year in which the acquisition occurs.
- (3) But this section does not apply if section 425(2) (no charge on acquisition of certain restricted securities or restricted interests in securities) applies in relation to the employment-related securities.
- (4) This section does not affect any liability to income tax arising in respect of the acquisition of the employment-related securities under—
  - (a) Chapter 1 of Part 3 (earnings),
  - (b) Chapter 10 of Part 3 (taxable benefits: residual liability to charge),
  - (c) Chapter 3 of this Part (acquisition by conversion),
  - (d) Chapter 3C of this Part (acquisition for less than market value), or
  - (e) Chapter 5 of this Part (acquisition pursuant to securities option).

#### **446C Amount of charge**

- (1) The taxable amount for the purposes of section 446B (charge on acquisition) is—
 

FMVMV
- (2) FMV is what would be the market value of the employment-related securities at the time of the acquisition if the things mentioned in section 446B(1) had not been done.
- (3) MV is the actual market value of the employment-related securities at the time of the acquisition.
- (4) But where what would be MV is less than the amount of any consideration given for the acquisition of the employment-related securities, MV is the amount of that consideration.
- (5) This section is subject to section 446D (restricted securities and convertible securities).

#### **446D Restricted securities and convertible securities**

- (1) Where the employment-related securities are restricted securities or a restricted interest in securities, FMV (but not MV) is to be determined as if the employment-

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related securities were not restricted securities or a restricted interest in securities; and, accordingly, sections 426 to 431 (post-acquisition charges on restricted securities) do not apply to the employment-related securities.

- (2) Where the employment-related securities are convertible securities or an interest in convertible securities, FMV and MV are to be determined as if they were not.

#### *Other tax charges*

### **446E Charge on restricted securities**

- (1) This section applies where the market value of employment-related securities which are restricted securities or a restricted interest in securities is artificially low—

(a) immediately after an event which is a chargeable event in relation to the employment-related securities for the purposes of section 426 (charge on restricted securities),

<sup>F3</sup>(aa) [ immediately before the employment-related securities are disposed of (in circumstances which do not constitute such an event) or are cancelled without being disposed of,] or

(b) on 5th April in any year.

- (2) The market value of the employment-related securities is artificially low where it has been reduced by at least 10% as a result of things done otherwise than for genuine commercial purposes within the relevant period.

<sup>F4</sup>(3) “The relevant period” is the period beginning—

(a) if section 425(2) (no charge on acquisition of certain restricted securities or restricted interests in securities) applied in relation to the employment-related securities, 7 years before the acquisition, and

(b) in any other case, 7 years before the relevant date,

and ending with the relevant date.

(4) “The relevant date” is—

(a) in a case within subsection (1)(a), the date on which the chargeable event concerned occurs,

(b) in a case within subsection (1)(aa), the date on which the disposal or cancellation concerned occurs, and

(c) in a case within subsection (1)(b), the 5th April concerned.

- (5) Where this section applies in a case within subsection (1)(aa) or (b), a chargeable event within section 427(3)(a) (lifting of restrictions) is to be treated as occurring in relation to the employment-related securities on the relevant date.

- (6) In every case where this section applies, subsection (1) of section 428 (amount of charge on restricted securities) applies as if the reference in subsection (2) of that section to what would be the market value of the employment-related securities immediately after the chargeable event but for any restrictions were to what would be their market value at the appropriate time but for the matters to be disregarded.

(7) “The appropriate time” is—

(a) in a case within subsection (1)(a) or (b), the time immediately after the chargeable event concerned, and

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- (b) in a case within subsection (1)(aa), the time immediately before the chargeable event concerned.
- (8) “The matters to be disregarded” are—
  - (a) any restrictions,
  - (b) the things done as mentioned in subsection (2), and
  - (c) if the employment-related securities are about to be disposed of or cancelled, that fact.
- (9) Where this section applies in a case within subsection (1)(aa), section 428(1) applies with the omission of the reference to OP.
- (10) Where this section applies in a case within subsection (1)(a) and the chargeable event concerned is within section 427(3)(c) (disposal for consideration), section 428 applies with the omission of subsection (9) (case where consideration is less than actual market value).]

#### Textual Amendments

- F3** S. 446E(1)(aa) inserted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\), s. 87\(2\)\(4\)](#) (with s. [87\(5\)](#))
- F4** Ss. 446E(3)-(10) substituted for (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\), s. 87\(3\)\(4\)](#) (with s. [87\(5\)](#))

#### **446F Adjustment of market value: conditional interests**

- (1) This section applies where the market value of an employee’s interest in shares which is only conditional is artificially low immediately after a chargeable event relating to the shares under section 427 as originally enacted.
- (2) The market value of the shares is artificially low where it has been reduced by at least 10% as a result of things done otherwise than for genuine commercial purposes within the period beginning—
  - (a) 7 years before the chargeable event, or
  - (b) with 16th April 2003,
 whichever is later.
- (3) There is a chargeable event in relation to shares if section 427 (as originally enacted) applies in relation to them.
- (4) The reference in the definition of MV in section 428(1) (as originally enacted) to the market value of the employee’s interest is to what would be the market value but for the reduction as a result of the things done as mentioned in subsection (2).
- (5) Expressions used in this section and in Chapter 2 of this Part as originally enacted have the same meaning in this section as in that Chapter.

#### **446G Adjustment of market value: consideration for entitlement to convert**

- (1) This section applies where the market value of employment-related securities which are convertible securities or an interest in convertible securities (determined as if they were not) has been reduced by at least 10% as a result of things done otherwise than for genuine commercial purposes within the period of 7 years ending with the acquisition.

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- (2) The reference to the market value of the employment-related securities in the definition of NCMV in section 442(5) (value of convertible securities at time of acquisition) is to what would be the market value but for the reduction as a result of the things done as mentioned in subsection (1) (and but for the fact that they are convertible securities or an interest in convertible securities).

#### **446H Adjustment of market value: charge on conversion**

- (1) This section applies where the market value of securities (“the converted securities”) into which employment-related securities (or securities in which employment-related securities are an interest) are converted is artificially low at the time of an event which is a chargeable event in relation to the employment-related securities by virtue of section 439(3)(a) (conversion).
- (2) The market value of the converted securities is artificially low where it has been reduced by at least 10% as a result of things done otherwise than for genuine commercial purposes within the period of 7 years ending with the chargeable event.
- (3) The references to the market value of the converted securities in the definition of CMVCS in section 441(6) (amount of gain realised by conversion) are to what would be the market value but for the reduction as a result of the things done as mentioned in subsection (2).

#### **446I Adjustment of consideration or benefit received**

- (1) This section applies where any consideration or benefit mentioned in—
  - (a) section 428(9) (consideration on disposal of restricted securities),
  - (b) section 441(4), (5) or (9) (consideration for disposal of convertible securities or release of entitlement to convert or benefit received in respect of entitlement to convert),
  - (c) section 446C(4) (securities with artificially depressed market value: MV to be amount of consideration),
  - (d) sections 446X and 446Y(3) (consideration for disposal of securities exceeding market value), or
  - (e) section 448 (securities benefit not otherwise subject to tax),consists (in whole or in part) in the provision of securities or an interest in securities the market value of which is artificially low.
- (2) The market value of any securities or interest in securities is artificially low where it has been reduced by at least 10% as a result of things done otherwise than for genuine commercial purposes within the period of 7 years ending with the receipt of the consideration or benefit.
- (3) The market value of the consideration or benefit consisting in the provision of the securities or interest in securities is for the purposes of the provision or provisions concerned to be taken to be what it would be but for the reduction as a result of the things done as mentioned in subsection (2).

#### **Disapplication of exceptions from charges**

**446IA**

- (1) Section 429 (exception from charge under section 426 for certain company shares) does not prevent section 426 (restricted securities: chargeable events) applying in

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relation to an event if section 446E or 446I(1)(a) would have effect in relation to the event.

- (2) Section 443 (exception from charge under section 438 for certain company shares) does not prevent section 438 (convertible securities: chargeable events) applying in relation to an event if section 446G, 446H or 446I(1)(b) would have effect in relation to the event.
- (3) Section 446R (exception from charge under Chapter 3C for certain company shares) does not prevent that Chapter (securities acquired for less than market value) applying in relation to employment-related securities if section 446B would have effect in relation to them.
- (4) Section 449 (exception from charge under Chapter 4 for certain company shares) does not prevent that Chapter (benefits from securities) applying in relation to a benefit if section 446I(1)(e) would have effect in relation to the benefit.]

#### **Textual Amendments**

**F5** S. 446IA inserted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), s. **86(6)(8)**

### *Supplementary*

#### **446J Definitions**

- (1) In this Chapter—
  - “interest”, in relation to securities, and
  - “securities”,
 have the meaning indicated in section 420.
- (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”, and
  - “employment-related securities”,
 have the meaning indicated in section 421B(8).
- (5) In this Chapter—
  - “restricted interest in securities”, and
  - “restricted securities”,
 have the same meaning as in Chapter 2 of this Part (see sections 423 and 424).
- (6) In this Chapter “restriction” has the same meaning as in Chapter 2 of this Part (see section 432(8)).

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(7) In this Chapter “convertible securities” has the same meaning as in Chapter 3 of this Part (see section 436).]

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