



# 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 3B

SECURITIES WITH ARTIFICIALLY ENHANCED MARKET VALUE

#### Textual Amendments

- F2** Pt. 7 Ch. 3B inserted (16.4.2003 with effect in accordance with Sch. 22 para. 6(2)-(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 6\(1\)](#)

#### *Introduction*

#### **446K Application of this Chapter**

- (1) This Chapter applies in certain cases where the market value of employment-related securities is increased 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
  - (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).

*Status: Point in time view as at 05/12/2005.*

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- (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.
- (4) In this Chapter, in relation to the market value of the employment-related securities—
- “non-commercial increase” means an increase in the market value as a result of anything done otherwise than for genuine commercial purposes, and
- “non-commercial reduction” means a reduction in the market value as a result of anything done otherwise than for genuine commercial purposes.

*Charge on non-commercial increases*

**446L Charge on non-commercial increases**

- (1) This section applies in relation to employment-related securities where on a date that is the valuation date in relation to a relevant period IMV is at least 10% greater than MV.
- (2) The taxable amount determined under subsection (4) counts as employment income of the employee for the relevant tax year (but subject to sections 446M and 446N).
- (3) The “relevant tax year” is the tax year in which the valuation date falls.
- (4) The taxable amount is—
 

IMVMV
- (5) IMV is the market value of the employment-related securities on the valuation date.
- (6) MV is the amount that would be the market value of the employment-related securities on the valuation date if any non-commercial increases during the relevant period were disregarded.
- (7) For the purposes of subsections (5) and (6)—
  - (a) any restrictions having effect in relation to the employment-related securities on the valuation date, and
  - (b) any non-commercial reductions during the relevant period, are to be disregarded.

**446M Securities subject to restriction on valuation date**

- (1) This section applies where on the valuation date the employment-related securities are relevant restricted securities.
- (2) The amount determined under section 446L(4) is to be multiplied by CP.
- (3) CP is—
 

1OP

where OP is the amount that would be determined under section 428(5) (amount of charge on chargeable event in relation to restricted securities) on the valuation date if there were on that date a chargeable event (resulting in no tax charge).

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- (4) For the purposes of this section the employment-related securities are relevant restricted securities if they are restricted securities or a restricted interest in securities but are not subject to—
  - (a) an election under section 430 (election to ignore outstanding restrictions) in relation to a chargeable event which occurred before the valuation date, or
  - (b) an election under section 431(1) (election to treat securities as not subject to restrictions).
- (5) If sections 425 to 430 apply to the employment-related securities in accordance with section 431(2) (election to treat securities as not subject to specified restrictions), the reference in subsection (3) to the amount that would be determined under section 428(5) is to the amount that would be so determined in accordance with section 431(2).

#### **446N Securities subject to restriction during relevant period**

- (1) This section applies where the employment-related securities have been restricted securities or a restricted interest in securities at any time during the relevant period.
- (2) DA is to be deducted from the amount determined under section 446L(4) (or, where section 446M applies, the amount determined under sections 446L(4) and 446M).
- (3) DA is the aggregate of the amounts arrived at under subsection (4) in relation to each event occurring during the relevant period that is a chargeable event in relation to the employment-related securities.
- (4) The amount is—

TAARTA
- (5) TA is the taxable amount actually determined under section 428 in relation to the chargeable event.
- (6) ARTA is the taxable amount which would have been determined under section 428 in relation to the chargeable event if any non-commercial increases during the period—
  - (a) beginning at the same time as the relevant period, and
  - (b) ending immediately before the chargeable event,had been disregarded.

#### **I<sub>F3</sub> 446NA Disapplication of exceptions from charges**

- (1) None of the provisions specified in subsection (2) (exceptions from charges for certain company shares) apply in relation to employment-related securities if the market value of the employment-related securities at the time of the acquisition has been increased by at least 10% by non-commercial increases within the period of 7 years ending with the acquisition.
- (2) The provisions are—
  - (a) section 429 (restricted securities),
  - (b) section 443 (convertible securities),
  - (c) section 446R (securities acquired for less than market value), and
  - (d) section 449 (post-acquisition benefits from securities).

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- (3) If section 446L (market value on valuation date increased by more than 10% by non-commercial increases during relevant period) applies in relation to employment-related securities, section 429 does not subsequently apply in relation to the employment-related securities.]

#### Textual Amendments

**F3** S. 446NA inserted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\), s. 86\(7\)\(8\)](#)

### *Supplementary*

#### **446O “Relevant period” and “valuation date”**

- (1) This section explains what is meant by “relevant period” and “valuation date” in this Chapter.
- (2) The first relevant period in relation to employment-related securities is the period beginning with the date of the acquisition and ending with the following 5th April.
- (3) After the first relevant period, each period beginning with 6th April and ending with the following 5th April is a relevant period in relation to the employment-related securities.
- (4) But if this Chapter ceases to apply to the employment-related securities during a relevant period, the relevant period ends with the date on which this Chapter ceases to apply to them.
- (5) And if this Chapter ceases to apply to an interest in the employment-related securities during a relevant period, the relevant period ends in relation to that interest with the date on which this Chapter ceases to apply to that interest.
- (6) In a case where subsection (5) applies, this Chapter has effect separately in relation to that interest and the remainder of the employment-related securities.
- (7) In this Chapter “valuation date”, in relation to a relevant period, means the date with which the relevant period ends.

#### Modifications etc. (not altering text)

**C2** S. 446O modified (with effect in accordance with Sch. 2 para. 2(8) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), Sch. 2 para. 2\(8\)\(a\)](#)

#### **446P Definitions**

- (1) In this Chapter “interest”, in relation to securities, has the meaning indicated in section 420.
- (2) In this Chapter “market value” has the meaning indicated in section 421(1).
- (3) In this Chapter—
  - “the acquisition”,
  - “the employee”, and

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“employment-related securities”,  
have the meaning indicated in section 421B(8).

(4) 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).

(5) In this Chapter “chargeable event” means an event which is a chargeable event for the purposes of section 426.

(6) In this Chapter “restriction” has the same meaning as in Chapter 2 of this Part (see section 432(8)).

(7) In this Chapter—

“non-commercial increase”, and  
“non-commercial reduction”,

have the meaning indicated in section 446K(4).

(8) In this Chapter—

“relevant period”, and  
“valuation date”,

have the meaning indicated in section 446O.]

**Status:**

Point in time view as at 05/12/2005.

**Changes to legislation:**

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