

SCHEDULES

SCHEDULE 2

Section 12

EMPLOYEE SECURITIES: ANTI-AVOIDANCE

Introductory

1 ITEPA 2003 is amended as follows.

Rights under certain insurance contracts to be securities

2 (1) Section 420 (income and exemptions relating to securities: meaning of “securities” etc.) is amended as follows.

(2) In subsection (1), after paragraph (a) insert—

“(aa) rights under contracts of insurance other than excluded contracts of insurance,”.

(3) In paragraph (b) of that subsection, insert at the end “(other than contracts of insurance)”.

(4) In paragraph (g) of that subsection, insert at the end “(other than contracts of insurance)”.

(5) After that subsection insert—

“(1A) For the purposes of subsection (1)(aa) a contract of insurance is an excluded contract of insurance if it is—

- (a) a contract for an annuity which is (or will be) pension income (see Part 9),
- (b) a contract of long-term insurance, other than an annuity contract, which does not have a surrender value and is not capable of acquiring one (whether on conversion or in any other circumstances), or
- (c) a contract of general insurance other than one which falls, in accordance with generally accepted accounting practice, to be accounted for as a financial asset or liability.

(1B) In this section—

“contract of insurance”,
“contract of long-term insurance”, and
“contract of general insurance”,

have the same meaning as in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.”

(6) In subsection (5)—

(a) at the end of paragraph (c) insert “and”, and

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(b) omit paragraph (d) (exclusion of insurance contracts).

(7) In Part 2 of Schedule 1 (index of defined expressions), insert at the appropriate place—

“generally accepted accounting practice Section 832(1) of ICTA”

(8) This paragraph has effect on and after 2nd December 2004 and applies in relation to rights under contracts of insurance acquired before that date, as well as those acquired on or after that date; and—

(a) for the purposes of the application of Chapter 3B of Part 7 of ITEPA 2003 (securities with artificially enhanced market value) by reason of this paragraph in relation to rights under contracts of insurance acquired before that date, section 446O of that Act (meaning of “relevant period”) has effect as if they were acquired on that date, and

(b) for the purposes of section 420(1A)(c) of ITEPA 2003, section 50 of FA 2004 (meaning of “generally accepted accounting practice”) has effect on and after that date, in spite of subsection (6) of that section.

Restricted securities

3 Chapter 2 of Part 7 (restricted securities) is amended as follows.

4 (1) Section 424 (employment-related securities which are not restricted securities or restricted interest in securities) is renumbered as subsection (1) of that section.

(2) In that subsection—

(a) at the end of paragraph (a) insert “or”, and

(b) omit paragraph (c) (employment-related securities which are, or are an interest in, redeemable securities) and the word “or” before it.

(3) After that subsection insert—

“(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.”

(4) This paragraph has effect on and after 2nd December 2004 and applies in relation to employment-related securities acquired before that date, as well as those acquired on or after that date; and section 422 of ITEPA 2003 (application of Chapter 2 of Part 7) applies to employment-related securities in relation to which this paragraph has effect and which were acquired before that date with the omission of the words “at the time of the acquisition”.

5 (1) In section 428 (amount of charge under section 426), after subsection (9) insert—

“(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.”

(2) This paragraph has effect where something such as is mentioned in section 428(10) of ITEPA 2003 has been done on or after 2nd December 2004.

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- 6 (1) In section 429 (exception from charge under section 426 for certain company shares), for subsection (1A) substitute—

“(1A) 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.”

- (2) This paragraph has effect where something such as is mentioned in section 429(1A) of ITEPA 2003 has been done on or after 2nd December 2004.

- 7 (1) After section 431A insert—

“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.”

- (2) This paragraph has effect in relation to employment-related securities acquired on or after 2nd December 2004.

Convertible securities

- 8 Chapter 3 of Part 7 (convertible securities) is amended as follows.

- 9 (1) In section 436(a) (meaning of “convertible securities”), for “immediate or conditional entitlement” substitute “entitlement (whether immediate or deferred and whether conditional or unconditional)”.

- (2) Section 437 (adjustment of acquisition charge) is renumbered as subsection (1) of that section.

- (3) After that subsection insert—

“(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 unless the market value of the employment-related securities determined under subsection (1) would be greater than that determined under subsection (3).

- (3) Where subsection (1) does not apply by virtue of subsection (2) the market value of the employment-related securities is to be determined—

(a) where the securities which are (or an interest in which is) the employment-related securities fall within paragraph (a) of section 436 and the entitlement to convert is not both immediate and unconditional, as if it were,

(b) where they fall within paragraph (b) of that section, as if the circumstances are such that an entitlement to convert arises immediately, and

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- (c) where they fall within paragraph (c) of that section, as if provision were made for their immediate conversion;
- and in each case is to be determined as if they were immediately and fully convertible.
- (4) In subsection (3) “immediately and fully convertible” means convertible immediately after the acquisition of the employment-related securities so as to obtain the maximum gain that would be possible on a conversion at that time (assuming, where the securities into which the securities may be converted were not in existence at that time and it is appropriate to do so, that they were) without giving any consideration for the conversion or incurring any expenses in connection with it.”
- (4) This paragraph has effect in relation to acquisitions on or after 2nd December 2004.
- 10 (1) In section 440 (amount of charge under section 438), after subsection (3) insert—
- “(3A) If (because of subsection (2) of section 437) subsection (1) of that section did not apply in relation to the employment-related securities, the taxable amount is to be reduced by the amount by which—
- (a) the market value of the employment-related securities for the purposes specified in that subsection, exceeded
- (b) what it would have been had that subsection applied,
- (less the aggregate of any amount by which the taxable amount on any previous chargeable event relating to the employment-related securities has been reduced under this subsection).”
- (2) This paragraph has effect on and after 2nd December 2004.
- 11 (1) In section 443 (exception from charge under section 438 for certain company shares), for subsection (1A) substitute—
- “(1A) This subsection is satisfied unless something which affects the employment-related securities has been done (at or before the time when section 438 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.”
- (2) This paragraph has effect where something such as is mentioned in section 443(1A) of ITEPA 2003 has been done on or after 2nd December 2004.

Securities acquired for less than market value

- 12 Chapter 3C of Part 7 (securities acquired for less than market value) is amended as follows.
- 13 (1) In section 446R (exception from Chapter for certain company shares), for subsection (1A) substitute—
- “(1A) This subsection is satisfied unless something which affects the employment-related securities has been done (at or before the time of the acquisition) 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) This paragraph has effect where something such as is mentioned in section 446R(1A) of ITEPA 2003 has been done on or after 2nd December 2004.
- 14 (1) In section 446U(1) (discharge of notional loan), insert at the end “or
- (c) something which affects the employment-related securities is 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.”
- (2) This paragraph has effect where something such as is mentioned in section 443U(1) (c) of ITEPA 2003 has been done on or after 2nd December 2004.
- 15 (1) After section 446U insert—

“446UA Pre-acquisition avoidance cases

- (1) Sections 446S to 446U do 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.
- (2) But instead an amount equal to what would (apart from this section) be the amount of the notional loan initially outstanding by virtue of sections 446S and 446T counts as employment income of the employee for the tax year in which the acquisition takes place.”
- (2) This paragraph has effect in relation to acquisitions on or after 2nd December 2004.
- 16 (1) Section 698 (PAYE: special charges on employment-related securities) is amended as follows.
- (2) In subsection (1), after paragraph (e) insert—
- “(ea) section 446UA (securities or interest acquired for less than market value: charge in avoidance cases),”.
- (3) In subsection (6), after paragraph (d) insert—
- “(da) in relation to an amount counting as employment income under section 446UA, the date of the acquisition of the securities or interest in securities in question,”.
- (4) This paragraph has effect on and after the day on which this Act is passed.

Post-acquisition benefits from securities

- 17 Chapter 4 of Part 7 (post-acquisition benefits from securities) is amended as follows.
- 18 (1) Section 447 (charge on other chargeable benefits from securities) is amended as follows.
- (2) In subsection (1), for “by virtue of the ownership of employment-related securities by that person or another associated person” substitute “in connection with employment-related securities”.
- (3) For subsection (4) substitute—
- “(4) If the benefit is otherwise chargeable to income tax this section does not apply unless something has been done which affects the employment-related

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securities 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.”

- (4) Sub-paragraph (2) has effect on and after 2nd December 2004 and sub-paragraph (3) has effect where something such as is mentioned in section 447(4) of ITEPA 2003 has been done on or after that date.
- 19 (1) In section 449 (exception from charge under section 447 for certain company shares), for subsection (1A) substitute—
- “(1A) This subsection is satisfied unless something which affects the employment-related securities has been 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.”
- (2) This paragraph has effect where something such as is mentioned in section 449(1A) of ITEPA 2003 has been done on or after 2nd December 2004.

Corporation tax relief: minor and consequential amendments

- 20 (1) Schedule 23 to FA 2003 (corporation tax relief for employee shares) is amended as follows.
- (2) In paragraph 7 (award of shares: income tax position of employee), after sub-paragraph (2) insert—
- “(3) It must be the case that section 446UA of the Income Tax (Earnings and Pensions) Act 2003 does not operate in relation to the shares.”
- (3) In paragraph 21(8) (amount of relief in case of restricted shares: provision to be disregarded in determining amount of relief on a chargeable event under section 426), for “446E(3)” substitute “446E(6)”.
- (4) In paragraph 22C (amount of relief in case of convertible shares), after sub-paragraph (4) insert—
- “(4A) Subsections (2) and (3) of section 437 of the Income Tax (Earnings and Pensions) Act 2003 are to be disregarded in determining the amounts mentioned in sub-paragraphs (3) and (4).”
- (5) In paragraph 25(1) (exclusion of other deductions where relief available under Schedule 23), after “Schedule is” insert “(or, apart from paragraph 7(3), would be)”.
- (6) Sub-paragraphs (2), (4) and (5) have effect in relation to awards on or after the day on which this Act is passed.
- (7) Sub-paragraph (3) is to be treated as having come into force on 7th May 2004.