

*Status: Point in time view as at 18/06/2004.*

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# Income Tax (Earnings and Pensions) Act 2003

## 2003 CHAPTER 1

### PART 7

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

#### Textual Amendments

- F1** Pt. 7 heading substituted (with effect in accordance with Sch. 22 para. 2(2) of the amending Act) by Finance Act 2003 (c. 14), [Sch. 22 para. 2\(1\)](#)

### [<sup>F2</sup>CHAPTER 1

#### INTRODUCTION

#### Textual Amendments

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

#### *General*

#### **417** Scope of Part 7

- (1) This Part contains special rules about cases where securities, interests in securities or securities options are acquired in connection with an employment.
- (2) The rules are contained in—  
Chapter 2 (restricted securities),

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Chapter 3 (convertible securities),  
 Chapter 3A (securities with artificially depressed market value),  
 Chapter 3B (securities with artificially enhanced market value),  
 Chapter 3C (securities acquired for less than market value),  
 Chapter 3D (securities disposed of for more than market value),  
 Chapter 4 (post-acquisition benefits from securities),  
 Chapter 5 (securities options),  
 Chapter 6 (approved share incentive plans),  
 Chapter 7 (approved SAYE option schemes),  
 Chapter 8 (approved CSOP schemes),  
 Chapter 9 (enterprise management incentives), and  
 Chapter 10 (priority share allocations).

- (3) The following make provision for amounts to count as employment income—  
 Chapters 2 to 6, and  
 Chapter 8.
- (4) The following make provision for exemptions and reliefs from income tax—  
 Chapters 2 and 3, and  
 Chapters 5 to 10.
- (5) Chapter 11 contains supplementary provisions relating to employee benefit trusts.
- (6) Section 5(1) (application of employment income Parts to office-holders generally) does not apply to Chapters 6 to 10; and section 549(5) makes provision about its application to Chapter 11.

#### **418 Other related provisions**

- (1) In Part 3—  
 Chapter 1 (earnings), and  
 Chapter 10 (taxable benefits: residual liability to charge),  
 may also have effect in relation to securities and interests in securities (but not securities options).
- (2) Part 7 of Schedule 7 (transitional provisions relating to securities and securities options) may also be relevant.
- (3) In view of section 49 of FA 2000 (phasing out of APS schemes) the following are not rewritten in this Act and continue in force unaffected by the repeals made by this Act—  
 section 186 of ICTA (APS schemes) and section 187 of that Act (interpretation) so far as relating to APS schemes, and  
 Schedule 9 to ICTA (approval of share schemes) so far as relating to APS schemes and Schedule 10 to that Act (further provisions about APS schemes).  
 “APS schemes” means profit sharing schemes approved under Schedule 9 to ICTA.
- (4) Sections 138 to 140 of ICTA (share acquisitions by directors and employees) continue to apply in relation to shares or interests in shares acquired before 26th October 1987 (see paragraph 57 of Schedule 7).

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#### **419 Negative amounts treated as nil**

If the result given by any formula under any provision of this Part would otherwise be a negative amount, the result is to be taken to be nil instead.

#### *Interpretation of Chapters 1 to 5*

#### **420 Meaning of “securities” etc**

- (1) Subject to subsections (5) and (6), for the purposes of this Chapter and Chapters 2 to 5 the following are “securities”—
- (a) shares in any body corporate (wherever incorporated) or in any unincorporated body constituted under the law of a country or territory outside the United Kingdom,
  - (b) debentures, debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness,
  - (c) warrants and other instruments entitling their holders to subscribe for securities (whether or not in existence or identifiable),
  - (d) certificates and other instruments conferring rights in respect of securities held by persons other than the persons on whom the rights are conferred and the transfer of which may be effected without the consent of those persons,
  - (e) units in a collective investment scheme,
  - (f) futures, and
  - (g) rights under contracts for differences or contracts similar to contracts for differences.
- (2) In subsection (1)(e) “collective investment scheme” means arrangements—
- (a) which are made with respect to property of any description, including money, and
  - (b) the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.
- (3) In subsection (1)(f) “futures” means rights under a contract for the sale of a commodity or other property under which delivery is to be made at a future date at a price agreed when the contract is made; and for this purpose a price is to be taken to be agreed when the contract is made—
- (a) if it is left to be determined by reference to the price at which a contract is to be entered into on a market or exchange or could be entered into at a time and place specified in the contract, and
  - (b) in a case where the contract is expressed to be by reference to a standard lot and quality, even if provision is made for a variation in the price to take account of any variation in quantity or quality on delivery.
- (4) For the purposes of subsection (1)(g) a contract similar to a contract for differences is a contract—
- (a) which is not a contract for differences, but

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- (b) the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property or an index or other factor designated in the contract.
- (5) The following are not “securities” for the purposes of this Chapter or Chapters 2 to 5—
- (a) cheques and other bills of exchange, bankers' drafts and letters of credit (other than bills of exchange accepted by a banker),
  - (b) money and statements showing balances on a current, deposit or savings account,
  - (c) leases and other dispositions of property and heritable securities,
  - (d) rights under contracts of insurance (within the meaning of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001), and
  - (e) options.
- (6) The Treasury may by order amend subsections (1) to (5).
- (7) An order under subsection (6) may include any appropriate consequential provision (including provision amending any enactment).
- (8) In this Chapter and Chapters 2 to 5—
- “interest”, in relation to securities (or shares), means an interest in them less than full beneficial ownership and includes an interest in proceeds of their sale, but does not include a right to acquire them,
  - “securities option” means a right to acquire securities, and
  - “shares” includes stock.

#### **421 Meaning of “market value” etc**

- (1) In this Chapter and Chapters 2 to 5 “market value” has the same meaning as it has for the purposes of TCGA 1992 by virtue of Part 8 of that Act.
- (2) Where consideration for anything is given in the form of an asset (as opposed to a payment), any reference in this Chapter or any of Chapters 2 to 5 to the amount of the consideration is to the market value of the asset.

#### **421A Meaning of “consideration”**

- (1) This section applies for determining for the purposes of Chapters 2 to 5 the amount of the consideration given for anything.
- (2) If any consideration is given partly in respect of one thing and partly in respect of another, the amount given in respect of the different things is to be determined on a just and reasonable apportionment.
- (3) The consideration which is taken to be given wholly or partly for anything does not include the performance of any duties of, or in connection with, an employment.
- (4) No amount is to be counted more than once in calculating the amount of any consideration.

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### *Application of Chapters 2 to 4*

#### **421B Application of Chapters 2 to 4**

- (1) Subject as follows (and to any provision contained in Chapters 2 to 4) those Chapters apply to securities, or an interest in securities, acquired by a person where the right or opportunity to acquire the securities or interest is available by reason of an employment of that person or any other person.
- (2) For the purposes of subsection (1)—
  - (a) securities are, or an interest in securities is, acquired at the time when the person acquiring the securities or interest becomes beneficially entitled to those securities or that interest (and not, if different, the time when the securities are, or interest is, conveyed or transferred), and
  - (b) “employment” includes a former or prospective employment.
- (3) A right or opportunity to acquire securities or an interest in securities made available by a person’s employer, or by a person connected with a person’s employer, is to be regarded for the purposes of subsection (1) as available by reason of an employment of that person unless—
  - (a) the person by whom the right or opportunity is made available is an individual, and
  - (b) the right or opportunity is made available in the normal course of the domestic, family or personal relationships of that person.
- (4) Chapters 2 to 4 cease to apply to securities, or an interest in securities, when subsection (5), (6) or (7) is satisfied.
- (5) This subsection is satisfied immediately after the securities are, or the interest in securities is, disposed of otherwise than to an associated person.
- (6) This subsection is satisfied immediately before the death of the employee.
- (7) This subsection is satisfied 7 years after the first date after the acquisition on which the employee is an employee of none of the following—
  - (a) the employer,
  - (b) (if the securities are, or the interest in securities is an interest in, securities issued by a company) the company by which they are issued, or
  - (c) a person connected with a person within paragraph (a) or (b).
- (8) In this Chapter and Chapters 2 to 4—

“the acquisition”, in relation to employment-related securities, means the acquisition of the employment-related securities pursuant to the right or opportunity available by reason of the employment,

“the employment”, in relation to employment-related securities, means the employment by reason of which the right or opportunity to acquire the employment-related securities is available (“the employee” and “the employer” being construed accordingly unless otherwise indicated), and

“employment-related securities” means securities or an interest in securities to which Chapters 2 to 4 apply (ignoring any provision of any of those Chapters which limits the application of the Chapter to a particular description or descriptions of employment-related securities).

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## 421C Associated persons

- (1) For the purposes of this Chapter and Chapters 2 to 4 the following are “associated persons” in relation to employment-related securities—
  - (a) the person who acquired the employment-related securities on the acquisition,
  - (b) (if different) the employee, and
  - (c) any relevant linked person.
- (2) A person is a relevant linked person if—
  - (a) that person (on the one hand), and
  - (b) either the person who acquired the employment-related securities on the acquisition or the employee (on the other),

[<sup>F3</sup>are or have been connected or (without being or having been connected) are or have been] members of the same household.
- (3) But a company which would otherwise be a relevant linked person is not if it is—
  - (a) the employer,
  - (b) the person from whom the employment-related securities were acquired,
  - (c) the person by whom the right or opportunity to acquire the employment-related securities was made available, or
  - (d) the person by whom the employment-related securities (or the securities in which they are an interest) were issued.

### Textual Amendments

**F3** Words in s. 421C(2) substituted (18.6.2004 with application in accordance with s. 90(5) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 90\(2\)](#)

## 421D Replacement and additional securities and changes in interests

- (1) Subsections (2) and (3) apply where an associated person is entitled to employment-related securities (the “original securities”) and either—
  - (a) as a result of the conversion of the original securities (or the securities in which they are an interest), or of any other transaction or series of transactions, that person ceases to be entitled to the original securities but that person or another associated person acquires securities or an interest in securities (the “replacement securities”), or
  - (b) by virtue of that person being entitled to the original securities, that person or another associated person acquires other securities or an interest in other securities (the “additional securities”).
- (2) The replacement securities or the additional securities are to be regarded for the purposes of section 421B(1) (securities acquired pursuant to a right or opportunity available by reason of an employment) as acquired pursuant to the same right or opportunity as the original securities.
- (3) Where the market value of the original securities is reduced by reason of the issue of, or of securities including, the replacement securities or the additional securities (or the securities in which they are an interest), the amount of that reduction is to be treated for the purposes of Chapters 2 and 3 as consideration or additional consideration given for the acquisition of the replacement securities or the additional securities.

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- (4) Subsections (2) and (3) apply whether or not the replacement securities, or the additional securities, were acquired for consideration.
- (5) Where Chapters 2 to 4 apply to an interest in securities, an increase of that interest is to be treated for the purposes of section 421B(1) (securities acquired pursuant to a right or opportunity available by reason of an employment) as a separate interest acquired pursuant to the same right or opportunity as the original interest.
- (6) Where Chapters 2 to 4 apply to an interest in securities, a reduction of that interest (otherwise than by a disposal to an associated person) is to be treated for the purposes of those Chapters as the disposal otherwise than to an associated person of a separate interest proportionate to the reduction.

#### **421E Exclusions: residence etc**

- (1) Chapters 2, 3 and 4 do not apply in relation to employment-related securities if, at the time of the acquisition, the earnings from the employment were not (or would not have been if there had been any) general earnings to which section 15 or 21 applies (earnings for year when employee resident and ordinarily resident in the UK).
- (2) Chapters 3A to 3D do not apply in relation to employment-related securities if, at the time of the acquisition, the earnings from the employment were not (or would not have been if there had been any) general earnings to which any of the charging provisions of Chapter 4 or 5 of Part 2 apply.
- (3) Chapters 2 to 4 do not apply in the case of a former employment if they would not apply if the acquisition had taken place in the last tax year in which the employment was held.
- (4) Chapters 2 to 4 do not apply in the case of a prospective employment if they would not apply if the acquisition had taken place in the first tax year in which the employment is held.
- (5) Where the employment-related securities are replacement securities or additional securities (within the meaning of section 421D), the references in this section to the acquisition are to the acquisition of the original securities (within the meaning of that section).

#### **421F Exclusions: public offers**

- (1) [<sup>F4</sup>Chapters 2, 3 and 3C] do not apply in relation to employment-related securities that are shares acquired under the terms of an offer to the public or an interest in shares so acquired.
- [<sup>F5</sup>(1A) But subsection (1) does not disapply those Chapters if the main purpose (or one of the main purposes)—
  - (a) of the arrangements under which the right or opportunity under which the shares were acquired, or
  - (b) for which the shares are held,is the avoidance of tax or national insurance contributions.]
- (2) In a case within subsection (1) of section 544 (exemption for priority share allocations where offer to employees separate from public offer), any acquisition made under the terms of either the public offer or the employee offer within the meaning of that

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subsection is to be treated for the purposes of this section as made under the terms of an offer to the public.

- (3) Subsection (2) applies whether or not there is any benefit within section 544(2) (benefit derived from entitlement to priority allocation exempt from income tax).

#### Textual Amendments

- F4** Words in s. 421F(1) substituted (18.6.2004 with application in accordance with s. 89(4)(5) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 89\(2\)](#)
- F5** S. 421F(1A) inserted (18.6.2004 with application in accordance with s. 89(4)(5) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 89\(3\)](#)

#### <sup>F6</sup>421G Exclusions: approved plan or scheme securities

#### Textual Amendments

- F6** S. 421G repealed (18.6.2004 with effect in accordance with s. 88(11)-(13) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 88\(2\), Sch. 42 Pt. 2\(11\)](#)

#### 421H Meaning of “employee-controlled” etc

- (1) For the purposes of Chapters 2 to 4 a company is “employee-controlled” by virtue of shares of a class if—
- (a) the majority of the company’s shares of that class (other than any held by or for the benefit of an associated company) are held by or for the benefit of employees of the company or a company controlled by the company, and
  - (b) those employees are together able as holders of the shares to control the company.

In this subsection “employee” includes a person who is to be or has been an employee.

- (2) In this section and Chapters 2 to 4 “associated company” has the same meaning as, by virtue of section 416 of ICTA, it has for the purposes of Part 11 of ICTA.

#### 421I Consideration for acquisition of employment-related securities

- (1) This section applies for determining for the purposes of Chapters 2 to 3A the amount of the consideration given for the acquisition of employment-related securities.
- (2) References to consideration given for the acquisition of the employment-related securities are to consideration given by—
- (a) the employee, or
  - (b) (if not the employee) the person by whom the employment-related securities were acquired.
- (3) The amount of the consideration given by a person for the acquisition of the employment-related securities includes the amount of any consideration given for a right to acquire the employment-related securities.



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- (4) If the right to acquire the employment-related securities (“the new option”) is the whole or part of the consideration for the assignment or release of another right to acquire them (“the old option”), the amount of the consideration given for the new option is to be treated as being the sum of—
  - (a) the amount by which the amount of the consideration given for the old option exceeds the amount of any consideration for the assignment or release of the old option, apart from the new option, and
  - (b) any valuable consideration given for the new option, apart from the old option.
- (5) Two or more transactions are to be treated for the purposes of subsection (4) as a single transaction by which a right to acquire the employment-related securities is assigned for a consideration which consists of or includes another right to acquire the employment-related securities if—
  - (a) the transactions result in a person ceasing to hold a right to acquire the employment-related securities and that person or a connected person coming to hold another right to acquire them, and
  - (b) one or more of the transactions is effected under arrangements to which two or more persons who hold rights to acquire the employment-related securities, in respect of which there may be a liability to tax under Chapter 5 of this Part (securities options), are parties.
- (6) Subsection (5) applies regardless of the order in which the assignment and the acquisition occur.
- (7) In this section “release”, in relation to a right to acquire the employment-related securities, includes agreeing to the restriction of the exercise of the right.

### *Information*

#### **421J Duty to provide information**

- (1) This section applies in relation to reportable events.
- (2) Section 421K explains what are reportable events for the purposes of this section.
- (3) Each person who is a responsible person in relation to a reportable event must provide the Inland Revenue with particulars in writing of the reportable event before 7th July in the tax year following that in which the reportable event takes place.
- (4) The Inland Revenue may by notice require any person to provide them with such particulars of any reportable events—
  - (a) which take place in a period specified in the notice, and
  - (b) in relation to which that person is a responsible person,as are required by the notice or, if no reportable event in relation to which that person is a responsible person has taken place in that period, to state that fact.
- (5) A notice under subsection (4) must specify a date by which it must be complied with.
- (6) That date must not be less than 30 days after the date when the notice is given.
- (7) Once one person complies with the duty imposed by subsection (3) in relation to a reportable event, that subsection ceases to impose a duty on any other person in relation to the reportable event.

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- (8) Once a person complies with the duty imposed by a notice under subsection (4) by providing the required particulars of a reportable event, subsection (3) ceases to impose a duty on that person or any other person in relation to that reportable event.
- (9) Section 421L explains who are the responsible persons in relation to a reportable event.
- (10) The particulars required by, or by a notice under, this section must be provided in a form specified by the Board of Inland Revenue.
- (11) A person need not provide particulars required by, or by a notice under, this section if they have been given in a notice under paragraph 44 of Schedule 5 (enterprise management incentives: notice of option to be given to Inland Revenue).  
  
In other respects the obligations imposed by, or by a notice under, this section and by that paragraph are independent of each other.
- (12) Paragraph 52 of that Schedule contains a duty to deliver annual returns where a company's shares are subject to a qualifying option within the meaning of that Schedule.

#### **421K Reportable events**

- (1) This section applies for the purposes of section 421J (duty to provide information).
- (2) Each of the events mentioned in subsection (3) is a reportable event.
- (3) The events are—
  - (a) an acquisition (or an event treated as an acquisition) of securities, an interest in securities or a securities option pursuant to a right or opportunity available by reason of the employment of the person who acquires the securities, interest in securities or securities option or of any other person,
  - (b) an event which is a chargeable event in relation to securities, or an interest in securities, for the purposes of section 426 (chargeable events in relation to restricted securities and restricted interests in securities),
  - (c) an event which is a chargeable event in relation to securities, or an interest in securities, for the purposes of section 438 (chargeable events in relation to convertible securities and interests in convertible securities),
  - (d) the doing of anything which gives rise to a taxable amount counting as employment income under section 446L (artificial enhancement of market value of securities),
  - (e) an event which discharges a notional loan relating to securities, or an interest in securities, under section 446U (securities and interests in securities acquired for less than market value),
  - (f) a disposal of securities, or an interest in securities, by virtue of which Chapter 3D of this Part applies (securities and interests in securities disposed of for more than market value),
  - (g) the receipt of a benefit which gives rise to a taxable amount counting as employment income under section 447 (charge on benefit from securities or interest in securities),
  - (h) the assignment or release of a securities option acquired pursuant to a right or opportunity available by reason of the employment of the person who acquires the securities option or any other person, and

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- (i) the receipt of a benefit in money or money's worth which is (or by virtue of section 477(6) is to be regarded as being) received in connection with such a securities option.

#### **421L Persons to whom section 421J applies**

- (1) This section applies for the purposes of section 421J (duty to provide information).
- (2) Each of the following persons is a responsible person in relation to a reportable event.
- (3) The persons are—
  - (a) the employer in question,
  - (b) any host employer of the employee in question,
  - (c) the person from whom the securities in question were, or interest or option in question was, acquired, and
  - (d) in relation to a reportable event concerning securities or an interest in securities which are not excluded securities, the person by whom the securities were issued.
- (4) In subsection (3)(b) “host employer” means a person other than the employer in question—
  - (a) for whom the employee in question works at the time of the reportable event, and
  - (b) who would, by virtue of subsection (2) of section 689 (employees of non-UK employers working for a person other than the employer), be treated for the purposes of PAYE regulations as making a payment of PAYE income of the employee in question if a payment to which subsection (5) would apply were made by the employer in question in respect of the period during which the employee works for the other person.
- (5) For the purposes of subsection (4)(b) this subsection would apply to a payment if—
  - (a) it were a payment of PAYE income of the employee, and
  - (b) the conditions in subsection (1)(c) and (d) of section 689 were satisfied in relation to the payment.
- (6) For the purposes of subsection (3)(d) securities are excluded securities in relation to a reportable event if they are—
  - (a) loan stock, bonds or other instruments creating or acknowledging indebtedness issued by or on behalf of any national or regional government or local authority (in the United Kingdom or elsewhere) or any body whose members consists of states, national or regional governments or local authorities, or
  - (b) securities which are issued by a person who, at the time of the reportable event, is not connected with the employer in question and which are listed or dealt in on a recognised stock exchange.]

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## [<sup>F7</sup>CHAPTER 2

### RESTRICTED SECURITIES

#### Textual Amendments

- F7** 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.

#### **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—

*Status: Point in time view as at 18/06/2004.*

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- (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**

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,
- (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
- (c) the employment-related securities (or the securities in which they are an interest) may be redeemed on payment of any amount.

#### *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 the Board of Inland Revenue, and
  - (b) may not be made more than 14 days after the acquisition.

*Status: Point in time view as at 18/06/2004.*

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### *Tax charge on post-acquisition chargeable events*

#### **426 Charge on occurrence of chargeable event**

- (1) This section applies if a chargeable event occurs in relation to the employment-related securities.
- (2) The taxable amount determined under section 428 counts as employment income of the employee for the relevant tax year.
- (3) The “relevant tax year” is the tax year in which the chargeable event occurs.
- (4) Section 427 explains what are chargeable events for the purposes of this section.
- (5) This section is subject to section 429 (case outside charge under this section).

#### **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 Amount of charge**

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

$$UMV \times (IUPPCPOP)CE$$

- (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—

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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—

$$\text{IUPPCPOP}$$

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—

$$\text{UMVAMVUMV}$$

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,
- (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
- (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.

*Status: Point in time view as at 18/06/2004.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003, Part 7 is up to date with all changes known to be in force on or before 27 June 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)*

- (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.

#### **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,
  - <sup>[F8]</sup>(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.

<sup>[F9]</sup>(1A) This subsection is satisfied if the avoidance of tax or national insurance contributions was not the main purpose, or one of the main purposes, of the arrangements under which the right or opportunity to acquire the employment-related securities was made available.]

- (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 <sup>[F10]</sup>employment-related securities.]
- (5) For the purposes of subsection (4) a person is related to an employee if—
  - (a) the person acquired the shares pursuant to a right or opportunity available by reason of the employee's employment, or



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- (b) the person is connected with a person who so acquired the shares or with the employee and acquired the shares otherwise than by or under a disposal made by way of a bargain at arm's length from the employee or another person who is related to the employee.

#### Textual Amendments

- F8** S. 429(1)(ba) inserted (retrospective to 7.5.2004) by Finance Act 2004 (c. 12), ss. 86(2)(a)(3)(8), 86(1)
- F9** S. 429(1A) inserted (retrospective to 7.5.2004) by Finance Act 2004 (c. 12), ss. 86(2)(a)(4)(8), 86(1)
- F10** 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)

### 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 the Board of Inland Revenue, and
  - (b) may not be made more than 14 days after the chargeable event.

### 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),

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- (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 the Board of Inland Revenue, and
  - (b) may not be made more than 14 days after the acquisition.

### **[<sup>F11</sup>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**

- F11** 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\(3\)](#)

### **432 Definitions**

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

*Status: Point in time view as at 18/06/2004.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003, Part 7 is up to date with all changes known to be in force on or before 27 June 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)*

- (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).]

## [<sup>F12</sup>CHAPTER 3

### CONVERTIBLE SECURITIES

#### Textual Amendments

- F12** Pt. 7 Ch. 3 substituted (1.9.2003 with effect in accordance with Sch. 22 para. 4(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 4\(1\)](#); S.I. 2003/1997, art. 2

#### *Introduction*

#### **435 Application of this Chapter**

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

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- (a) convertible securities, or
  - (b) an interest in convertible securities,
- at the time of the acquisition.

#### **436 “Convertible securities”**

For the purposes of this Chapter securities are convertible securities if—

- (a) they confer on the holder an immediate or conditional entitlement to convert them into securities of a different description,
- (b) a contract, agreement, arrangement or condition authorises or requires the grant of such an entitlement to the holder if certain circumstances arise, or do not arise, or
- (c) a contract, agreement, arrangement or condition makes provision for the conversion of the securities (otherwise than by the holder) into securities of a different description.

#### *Tax relief on acquisition*

#### **437 Adjustment of charge**

For the purposes of—

- (a) any liability to tax under Chapter 1 of Part 3 (earnings), Chapter 10 of Part 3 (taxable benefits: residual liability to charge) or Chapter 5 of this Part (acquisition of securities pursuant to securities option), and
- (b) the operation of Chapter 3C of this Part (acquisition of securities for less than market value),

the market value of the employment-related securities is to be determined as if they were not convertible securities or an interest in convertible securities.

#### *Tax charge on post-acquisition chargeable events*

#### **438 Charge on occurrence of chargeable event**

- (1) This section applies if a chargeable event occurs in relation to the employment-related securities.
- (2) The taxable amount determined under section 440 counts as employment income of the employee for the relevant tax year.
- (3) The “relevant tax year” is the tax year in which the chargeable event occurs.
- (4) Section 439 explains what are chargeable events for the purposes of this section.
- (5) This section is subject to section 443 (case outside charge under this section).

#### **439 Chargeable events**

- (1) This section applies for the purposes of section 438 (charge on occurrence of chargeable event).

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- (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 conversion of the employment-related securities (or the securities in which they are an interest) into securities of a different description in circumstances in which an associated person is beneficially entitled to the securities into which the employment-related securities are converted,
  - (b) 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 convertible securities or an interest in convertible securities),
  - (c) the release for consideration of the entitlement to convert the employment-related securities (or the securities in which they are an interest) into securities of a different description, and
  - (d) the receipt by an associated person of a benefit in money or money’s worth in connection with the entitlement to convert (other than securities acquired on the conversion of the employment-related securities or consideration such as is mentioned in paragraph (b) or (c)).
- (4) A benefit received on account of any disability (within the meaning of the Disability Discrimination Act 1995) of the employee is to be disregarded for the purposes of subsection (3)(d).

#### **440 Amount of charge**

- (1) The taxable amount for the purposes of section 438 (charge on occurrence of chargeable event) is—

AGCE
- (2) AG is the amount of any gain realised on the occurrence of the chargeable event.
- (3) CE is the amount of any consideration given for the entitlement to convert the employment-related securities or the securities in which they are an interest together with the amount of any expenses incurred by the holder of the employment-related securities in connection with the conversion, disposal, release or receipt.
- (4) Section 441 explains what is the amount of any gain realised on the occurrence of a chargeable event.
- (5) Section 442 explains whether consideration is given for the entitlement to convert the employment-related securities or the securities in which they are an interest and, if it is, what is its amount.

#### **441 Amount of gain realised on occurrence of chargeable event**

- (1) This section applies for the purposes of section 440 (amount of charge on occurrence of chargeable event).
- (2) The amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 439(3)(a) (conversion) is—

CMVCS(CMVERS+CC)

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- (3) The amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 439(3)(b) (disposal) is—

DCCMVERS

- (4) The amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 439(3)(c) (release of entitlement to convert) is the amount of the consideration received by an associated person in respect of the release.
- (5) The amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 439(3)(d) (receipt of benefit) is the amount or market value of the benefit.
- (6) CMVCS—
- (a) if the employment-related securities are securities, is the market value at the time of the chargeable event of the securities into which they are converted (determined, where those securities are themselves convertible securities, as if they were not), or
  - (b) if the employment-related securities are an interest in securities, is the same proportion of that market value as the market value of the interest in the securities in which the employment-related securities are an interest bears to the market value of those securities.
- (7) CMVERS is the market value of the employment-related securities at the time of the chargeable event determined as if they were not convertible securities or an interest in convertible securities.
- (8) CC is the amount of any consideration given for the conversion of the employment-related securities.
- (9) DC is the amount of the consideration given on the disposal.

#### **442 Amount of consideration given for entitlement to convert**

- (1) This section applies for the purposes of section 440 (amount of charge on occurrence of chargeable event).
- (2) Consideration is to be regarded as given for the entitlement to convert the employment-related securities (or the securities in which they are an interest) if (and only if) ACS exceeds NCMV.
- (3) The amount of the consideration to be regarded as so given is the amount of the excess.
- (4) ACS is the amount of the consideration given for the acquisition of the employment-related securities.
- (5) NCMV is the market value of the employment-related securities at the time of the acquisition, determined as if they were not convertible securities or an interest in convertible securities.

#### **443 Case outside charge under section 438**

- (1) Section 438 (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,

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- (b) all the company’s shares of the class are convertible securities,
  - [<sup>F13</sup>(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.
- [<sup>F14</sup>(1A) This subsection is satisfied if the avoidance of tax or national insurance contributions was not the main purpose, or one of the main purposes, of the arrangements under which the right or opportunity to acquire the employment-related securities was made available.]
- (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 439(3)(a) (conversion), if they are converted into securities of a different description,
    - (b) in the case of a chargeable event within section 439(3)(b) (disposal), if they are disposed of,
    - (c) in the case of a chargeable event within section 439(3)(c) (release of entitlement to convert), if the entitlement to convert them into securities of a different description is released, or
    - (d) in the case of a chargeable event within section 439(3)(d) (receipt of benefit), if a similar benefit is received in respect of the entitlement to convert them.
  - (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 [<sup>F15</sup>employment-related securities.]
  - <sup>F16</sup>(5) . . . . .

**Textual Amendments**

- F13** S. 443(1)(ba) inserted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), ss. 86(2)(b)(3)(8), 86(1)
- F14** S. 443(1A) inserted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), ss. 86(2)(b)(4)(8), 86(1)
- F15** Words in s. 443(4) substituted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), ss. 86(2)(b)(5)(8), 86(1)
- F16** S. 443(5) repealed (with effect in accordance with s. 86(8) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(11\)](#)

*Supplementary*

**444 Definitions**

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

*Status: Point in time view as at 18/06/2004.*

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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 443), 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 “convertible securities” has the meaning indicated in section 436.]

## [<sup>F17</sup>CHAPTER 3A

### SECURITIES WITH ARTIFICIALLY DEPRESSED MARKET VALUE

#### Textual Amendments

**F17** 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
  - (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



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*Status: Point in time view as at 18/06/2004.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003, Part 7 is up to date with all changes known to be in force on or before 27 June 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)*

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- (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-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.

*Status: Point in time view as at 18/06/2004.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003, Part 7 is up to date with all changes known to be in force on or before 27 June 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)*

### *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>F18</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>F19</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
  - (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.

*Status: Point in time view as at 18/06/2004.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003, Part 7 is up to date with all changes known to be in force on or before 27 June 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)*

- (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

- F18** S. 446E(1)(aa) inserted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\), s. 87\(2\)\(4\)](#) (with s. 87(5))
- F19** 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.
- (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).

*Status: Point in time view as at 18/06/2004.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003, Part 7 is up to date with all changes known to be in force on or before 27 June 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)*

#### **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**

**F20 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 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.

*Status: Point in time view as at 18/06/2004.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003, Part 7 is up to date with all changes known to be in force on or before 27 June 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)*

- (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

**F20** 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)).
- (7) In this Chapter “convertible securities” has the same meaning as in Chapter 3 of this Part (see section 436).]

*Status: Point in time view as at 18/06/2004.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003, Part 7 is up to date with all changes known to be in force on or before 27 June 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)*

## [<sup>F21</sup>CHAPTER 3B

### SECURITIES WITH ARTIFICIALLY ENHANCED MARKET VALUE

#### Textual Amendments

**F21** 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).
- (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.

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*Status: Point in time view as at 18/06/2004.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003, Part 7 is up to date with all changes known to be in force on or before 27 June 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)*

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- (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).

- (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

*Status: Point in time view as at 18/06/2004.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003, Part 7 is up to date with all changes known to be in force on or before 27 June 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)*

- (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.

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

**F22 446NA**

- (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).
- (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**

**F22** 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.



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*Status: Point in time view as at 18/06/2004.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003, Part 7 is up to date with all changes known to be in force on or before 27 June 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)*

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- (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.

#### **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
  - “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 18/06/2004.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003, Part 7 is up to date with all changes known to be in force on or before 27 June 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)*

## [<sup>F23</sup>CHAPTER 3C

### SECURITIES ACQUIRED FOR LESS THAN MARKET VALUE

#### Textual Amendments

**F23** Pt. 7 Ch. 3C inserted (with effect in accordance with Sch. 22 para. 7(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 7\(1\)](#)

#### 446Q Application of this Chapter

- (1) This Chapter applies if—
  - (a) no payment is made for employment-related securities at or before the time of the acquisition, or
  - (b) the payment made for employment-related securities at or before that time is less than their market value.
- (2) For the purposes of subsection (1) any obligation to make a payment or further payment after the time of the acquisition is to be disregarded.
- (3) Where the employment-related securities are, or are an interest in, securities which are not fully paid up, the reference in subsection (1) to the market value of the employment-related securities is to what it would be if the securities were fully paid up.
- (4) 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, this Chapter has effect as if the employment-related securities were not acquired until the occurrence of the first event which is a chargeable event for the purposes of section 426 in relation to the employment-related securities.
- (5) This section is subject to section 446R (case outside this Chapter).

#### 446R Case outside this Chapter

- (1) This Chapter does not apply if—
  - (a) the employment-related securities are shares (or an interest in shares) in a company of a class,
  - (b) all the company's shares of the class are acquired either for no payment or for a payment less than their market value,
  - (c) <sup>F24</sup>(ba) [ subsection (1A) is satisfied,] and
  - (c) subsection (3) or (4) is satisfied.

<sup>F25</sup>(1A) [ This subsection is satisfied if the avoidance of tax or national insurance contributions was not the main purpose, or one of the main purposes, of the arrangements under which the right or opportunity to acquire the employment-related securities was made available.]

- (2) Where the company's shares of the class are not fully paid up, the reference in subsection (1) to their market value is to what it would be if they were fully paid up.

*Status: Point in time view as at 18/06/2004.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003, Part 7 is up to date with all changes known to be in force on or before 27 June 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)*

- (3) This subsection is satisfied if, at the time of the acquisition of the employment-related securities, the company is employee-controlled by virtue of holdings of shares of the class.
- (4) This subsection is satisfied if, at that time, the majority of the company's shares of the class are not [<sup>F26</sup>employment-related securities.]
- (5) For the purposes of subsection (4) a person is related to an employee if—
  - (a) the person acquired the shares pursuant to a right or opportunity available by reason of the employee's employment, or
  - (b) the person is connected with a person who so acquired the shares or with the employee and acquired the shares otherwise than by or under a disposal made by way of a bargain at arm's length from the employee or another person who is related to the employee.

#### Textual Amendments

- F24** S. 446R(1)(ba) inserted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), [ss. 86\(2\)\(c\)\(3\)\(8\)](#), [86\(1\)](#)
- F25** S. 446R(1A) inserted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), [ss. 86\(2\)\(c\)\(4\)\(8\)](#), [86\(1\)](#)
- F26** Words in s. 446R(4) substituted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), [ss. 86\(2\)\(c\)\(5\)\(8\)](#), [86\(1\)](#)

#### 446S Notional loan

- (1) Where this Chapter applies an interest-free loan (“the notional loan”) is to be treated as having been made to the employee by the employer at the time of the acquisition.
- (2) The provisions listed in subsection (3) apply as though the notional loan were an employment-related loan as defined in section 174 if and for so long as the employment has not terminated.
- (3) The provisions are—
  - section 175 (benefit of taxable cheap loan treated as earnings),
  - section 178 (exception for loans where interest qualifies for tax relief),
  - section 180 (threshold for benefit of loan to be treated as earnings),
  - section 182 (normal method of calculation: averaging),
  - section 183 (alternative method of calculation),
  - section 184 (interest treated as paid),
  - section 185 (apportionment of cash equivalent in case of joint loan etc), and
  - section 187 (aggregation of loans by close company to director).

#### 446T Amount of notional loan

- (1) The amount of the notional loan initially outstanding is—

MVDA

where—

MV is the market value of the employment-related securities at the time of the acquisition, and

*Status: Point in time view as at 18/06/2004.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003, Part 7 is up to date with all changes known to be in force on or before 27 June 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)*

DA is the total of any deductible amounts.

- (2) Where the employment-related securities are, or are an interest in, securities which are not fully paid up, the reference in subsection (1) to the market value of the employment-related securities is to what it would be if the securities were fully paid up.
- (3) For the purposes of subsection (1) each of the following is a “deductible amount”—
  - (a) any payment made for the employment-related securities by the employee, and any payment so made by the person by whom they were acquired (if not the employee), at or before the time of the acquisition,
  - (b) any amount that constitutes earnings from the employee’s employment under Chapter 1 of Part 3 (earnings) in respect of the acquisition of the employment-related securities,
  - (c) 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, any amount that counts as employment income of the employee under section 426 by reason of the first event which is a chargeable event for the purposes of that section in relation to the employment-related securities,
  - (d) if the employment-related securities were acquired on a conversion of other employment-related securities, any amount that counts as employment income of the employee under section 438 (charge on conversion) by reason of the conversion, and
  - (e) if the acquisition is pursuant to a securities option, any amount that counted as employment income of the employee under section 476 (acquisition of securities pursuant to securities option) in respect of the acquisition.
- (4) The amount of the notional loan outstanding at any subsequent time is the difference between—
  - (a) the amount initially outstanding, and
  - (b) the amount of any payments or further payments made for the employment-related securities after the acquisition but before that time.

#### **446U Discharge of notional loan**

- (1) The notional loan is treated as discharged when—
  - (a) the employment-related securities are disposed of otherwise than to an associated person, or
  - (b) if the employment-related securities were securities, or an interest in securities, not fully paid up at the time of the acquisition, the outstanding or contingent liability to pay for them is released, transferred or adjusted so as no longer to bind any associated person.
- (2) If the notional loan is discharged as the result of an event specified in subsection (1), the amount of the notional loan outstanding immediately before the occurrence of the event counts as employment income of the employee for the relevant tax year (whether or not the employment has terminated before or since the acquisition).
- (3) The “relevant tax year” is the tax year in which the notional loan is treated as discharged.
- (4) The notional loan is also treated as discharged when—

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*Status: Point in time view as at 18/06/2004.*

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- (a) payments or further payments for the employment-related securities equal to the amount initially outstanding in relation to them have been made by an associated person, or
- (b) the employee dies.

#### **446V Chapter to be additional to other income tax charges**

This Chapter does not affect any liability to income tax arising in respect of the acquisition 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 3A of this Part (securities with artificially depressed market value), or
- (e) Chapter 5 of this Part (acquisition of securities pursuant to securities option).

#### **446W Definitions**

- (1) In this Chapter—
  - “interest”, in relation to securities,
  - “securities”,
  - “securities option”, and
  - “shares”,have 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” has the meaning indicated in section 421B(8) (but subject to section 446Q(4)).
- (4) In this Chapter—
  - “the employment”,
  - “the employee” (except in section 446R),
  - “the employer”, 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 “the notional loan” has the meaning indicated in section 446S(1).]

*Status: Point in time view as at 18/06/2004.*

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## [<sup>F27</sup>CHAPTER 3D

### SECURITIES DISPOSED OF FOR MORE THAN MARKET VALUE

#### Textual Amendments

**F27** Pt. 7 Ch. 3D inserted (with effect in accordance with Sch. 22 para. 8(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), **Sch. 22 para. 8(1)**

#### 446X Application of this Chapter

This Chapter applies if—

- (a) employment-related securities are disposed of by an associated person so that no associated person is any longer beneficially entitled to them, and
- (b) the disposal is for a consideration which exceeds the market value of the employment-related securities at the time of the disposal.

#### 446Y Amount treated as income

- (1) Where this Chapter applies the amount determined under subsection (3) counts as employment income of the employee for the relevant tax year.
- (2) The “relevant tax year” is the tax year in which the disposal occurs.
- (3) The amount is—

CDMVDA

where—

CD is the amount of the consideration given on the disposal,

MV is the market value of the employment-related securities at the time of the disposal,  
and

DA is the amount of any expenses incurred in connection with the disposal.

#### 446Z Definitions

- (1) In this Chapter “market value” has the meaning indicated in section 421(1).
- (2) For the purposes of this Chapter sections 421(2) and 421A apply for determining the amount of the consideration given for anything.
- (3) In this Chapter—
  - “the employee”, and
  - “employment-related securities”,
 have the meaning indicated in section 421B(8).
- (4) In this Chapter “associated person” has the meaning indicated in section 421C.]

*Status: Point in time view as at 18/06/2004.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003, Part 7 is up to date with all changes known to be in force on or before 27 June 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)*

## [<sup>F28</sup>CHAPTER 4

### POST-ACQUISITION BENEFITS FROM SECURITIES

#### Textual Amendments

**F28** Pt. 7 Ch. 4 (ss. 447-450) substituted for Pt. 7 Ch. 4 (ss. 447-470) (16.4.2003 with effect in accordance with Sch. 22 para. 9(2)-(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 9\(1\)](#)

#### **447 Charge on other chargeable benefits from securities**

- (1) This Chapter applies if an associated person receives a benefit by virtue of the ownership of employment-related securities by that person or another associated person.
- (2) The taxable amount determined under section 448 counts as employment income of the employee for the relevant tax year.
- (3) The “relevant tax year” is the tax year in which the benefit is received.
- (4) This section does not apply if the benefit is otherwise chargeable to income tax.
- (5) This section is subject to section 449 (case outside this Chapter).

#### **448 Amount of charge**

The taxable amount for the purposes of section 447 (charge on other chargeable benefits) is the amount or market value of the benefit.

#### **449 Case outside this Chapter**

- (1) This Chapter does not apply if—
  - (a) the employment-related securities are shares (or an interest in shares) in a company of a class,
  - (b) a similar benefit is received by the owners of all the company’s shares of the class,
  - [<sup>F29</sup>(ba) subsection (1A) is satisfied,] and
  - (c) subsection (2) or (3) is satisfied.

[<sup>F30</sup>(1A) This subsection is satisfied if the avoidance of tax or national insurance contributions was not the main purpose, or one of the main purposes, of the arrangements under which the right or opportunity to acquire the employment-related securities was made available.]

- (2) This subsection is satisfied if, immediately before the receipt of the benefit, the company is employee-controlled by virtue of holdings of shares of the class.
- (3) This subsection is satisfied if, immediately before the receipt of the benefit, the majority of the company’s shares of the class are not [<sup>F31</sup>employment-related securities.]
- (4) For the purposes of subsection (3) a person is related to an employee if—

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- (a) the person acquired the shares pursuant to a right or opportunity available by reason of the employee’s employment, or
- (b) the person is connected with a person who so acquired the shares or with the employee and acquired the shares otherwise than by or under a disposal made by way of a bargain at arm’s length from the employee or another person who is related to the employee.

**Textual Amendments**

**F29** S. 449(1)(ba) inserted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), ss. 86(2)(d)(3)(8), 86(1)

**F30** S. 449(1A) inserted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), ss. 86(2)(d)(4)(8), 86(1)

**F31** Words in s. 449(3) substituted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), ss. 86(2)(d)(5)(8), 86(1)

**450 Definitions**

- (1) In this Chapter—  
 “interest”, in relation to shares, and  
 “shares”,  
 have the meaning indicated in section 420(8).
- (2) In this Chapter “market value” has the meaning indicated in section 421(1).
- (3) In this Chapter—  
 “the employee” (except in section 449), and  
 “employment-related securities”,  
 have the meaning indicated in section 421B(8).
- (4) In this Chapter “associated person” has the meaning indicated in section 421C.
- (5) In this Chapter—  
 “associated company”, and  
 “employee-controlled”,  
 have the meaning indicated in section 421H.]

*Tax charge where restrictions or rights varied*

**<sup>F28</sup>451 Amount of charge**

.....

**<sup>F28</sup>452 Cases outside charge under section 449**

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*Tax charge on increase in value of shares of dependent subsidiaries*

**<sup>F28</sup>453 Charge on increase in value of shares of dependent subsidiary**

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*Status: Point in time view as at 18/06/2004.*

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**F28 454 Chargeable increases**

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**F28 455 Amount of charge**

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**F28 456 Cases outside charge under section 453**

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*Tax charge on other benefits from shares*

**F28 457 Charge on other chargeable benefits from shares**

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**F28 458 Chargeable benefits**

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**F28 459 Amount of charge**

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**F28 460 Cases outside charge under section 457**

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*Supplementary provisions*

**F28 461 Related acquisitions of additional shares**

.....

**F28 462 Company reorganisations etc.**

.....

**F28 463 Disposals of shares to connected persons etc. ignored**

.....

**F28 464 Application to interests in shares**

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*Status: Point in time view as at 18/06/2004.*

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**F28 465 Duty to notify acquisitions of shares or interests in shares**

.....

**F28 466 Duty to notify chargeable events and chargeable benefits**

.....

*Interpretation*

**F28 467 Meaning of “dependent subsidiary”**

.....

**F28 468 Meaning of “employee-controlled”**

.....

**F28 469 Shares “held by outside shareholders”**

.....

**F28 470 Minor definitions**

.....

[<sup>F32</sup>CHAPTER 5

SECURITIES OPTIONS

**Textual Amendments**

**F32** Pt. 7 Ch. 5 substituted (16.4.2003 for specified purposes and otherwise 1.9.2003 with effect in accordance with Sch. 22 para. 10(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 10\(1\)](#); S.I. 2003/1997, art. 2

*Introduction*

**471 Options to which this Chapter applies**

- (1) This Chapter applies to a securities option acquired by a person where the right or opportunity to acquire the securities option is available by reason of an employment of that person or any other person.
- (2) For the purposes of subsection (1) “employment” includes a former or prospective employment.
- (3) A right or opportunity to acquire a securities option made available by a person’s employer, or a person connected with a person’s employer, is to be regarded for the

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- purposes of subsection (1) as available by reason of an employment of that person unless—
- (a) the person by whom the right or opportunity is made available is an individual, and
  - (b) the right or opportunity is made available in the normal course of the domestic, family or personal relationships of that person.
- (4) A right or opportunity to acquire a securities option available by reason of holding employment-related securities is to be regarded for the purposes of subsection (1) as available by reason of the same employment as that by reason of which the right or opportunity to acquire the employment-related securities was available.
- (5) In this Chapter—
- “the acquisition”, in relation to an employment-related securities option, means the acquisition of the employment-related securities option pursuant to the right or opportunity available by reason of the employment,
- “the employment” means the employment by reason of which the right or opportunity to acquire the employment-related securities option is available (“the employee” and “the employer” being construed accordingly), and
- “employment-related securities option” means a securities option to which this Chapter applies.

## 472 Associated persons

- (1) For the purposes of this Chapter the following are “associated persons” in relation to an employment-related securities option—
- (a) the person who acquired the employment-related securities option on the acquisition,
  - (b) (if different) the employee, and
  - (c) any relevant linked person.
- (2) A person is a relevant linked person if—
- (a) that person (on the one hand), and
  - (b) either the person who acquired the employment-related securities option on the acquisition or the employee (on the other),
- [<sup>F33</sup>are or have been connected or (without being or having been connected) are or have been] members of the same household.
- (3) But a company which would otherwise be a relevant linked person is not if it is—
- (a) the employer,
  - (b) the person from whom the employment-related securities option was acquired, or
  - (c) the person by whom the right or opportunity to acquire the employment-related securities option was made available.

### Textual Amendments

**F33** Words in s. 472(2) substituted (18.6.2004 with application in accordance with s. 90(5) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 90\(3\)](#)

*Status: Point in time view as at 18/06/2004.*

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### **473 Introduction to taxation of securities options**

- (1) The starting-point is that section 475 contains an exemption from the liability to tax that might otherwise arise under—
  - (a) Chapter 1 of Part 3 (earnings), or
  - (b) Chapter 10 of that Part (taxable benefits: residual liability to charge),
 when an employment-related securities option is acquired.
- (2) Liability to tax may arise, when securities are acquired pursuant to the employment-related securities option, under—
  - (a) section 446B (charge on acquisition where market value of securities or interest artificially depressed),
  - (b) Chapter 3C of this Part (acquisition of securities for less than market value), or
  - (c) section 476 (acquisition of securities pursuant to securities option).
- (3) Liability to tax may also arise by virtue of section 476 when—
  - (a) the employment-related securities option is assigned or released, or
  - (b) a benefit is received in connection with the employment-related securities option.
- (4) There are special rules relating to share options acquired under—
  - (a) approved SAYE option schemes (see Chapter 7 of this Part),
  - (b) approved CSOP schemes (see Chapter 8 of this Part), or
  - (c) enterprise management incentives (see Chapter 9 of this Part).

### **474 Cases where this Chapter does not apply**

- (1) This Chapter (apart from sections 473 and 483) does not apply in relation to an employment-related securities option if, at the time of the acquisition, the earnings from the employment were not (or would not have been if there had been any) general earnings to which section 15 or 21 applies (earnings for year when employee resident and ordinarily resident in the UK).
- (2) This Chapter (apart from sections 473 and 483) does not apply in the case of a former employment if it would not apply if the acquisition had taken place in the last tax year in which the employment was held.
- (3) This Chapter (apart from sections 473 and 483) does not apply in the case of a prospective employment if it would not apply if the acquisition had taken place in the first tax year in which the employment is held.
- (4) Where the employment-related securities option is a new option (within the meaning of section 483), the references in this section to the acquisition are to the acquisition of the old option (within the meaning of that section).

#### *Tax relief on acquisition of option*

### **475 No charge in respect of acquisition of option**

- (1) No liability to income tax arises in respect of the acquisition of an employment-related securities option.

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- (2) Subsection (1) is subject to section 526 (approved CSOP schemes: charge where share option granted at a discount).

#### *Tax charge on post-acquisition chargeable events*

### **476 Charge on occurrence of chargeable event**

- (1) This section applies if a chargeable event occurs in relation to an employment-related securities option.
- (2) The taxable amount determined under section 478 counts as employment income of the employee for the relevant tax year (but subject to subsection (5)).
- (3) The “relevant tax year” is the tax year in which the chargeable event occurs.
- (4) Section 477 explains what are chargeable events for the purposes of this section.
- (5) If the employee has been divested of the employment-related securities option by operation of law, the person who is the relevant person in relation to the chargeable event (see section 477(7)) is chargeable to tax under Case VI of Schedule D on the amount determined under section 478.
- (6) This section is subject to—  
section 519 (approved SAYE option schemes: no charge in respect of exercise of share option by employee),  
section 524 (approved CSOP schemes: no charge in respect of exercise of share option by employee), and  
section 530 (enterprise management incentives: no charge on exercise by employee of option to acquire shares at market value).

### **477 Chargeable events**

- (1) This section applies for the purposes of section 476 (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 option unless it occurs on or after the death of the employee.
- (3) The events are—  
(a) the acquisition of securities pursuant to the employment-related securities option by an associated person,  
(b) the assignment for consideration of the employment-related securities option by an associated person otherwise than to another associated person or the release for consideration of the employment-related securities option by an associated person, or  
(c) the receipt by an associated person of a benefit [<sup>F34</sup>in connection with the employment-related securities option (other than one within paragraph (a) or (b)).]
- (4) For the purposes of subsection (3)(a) securities are acquired at the time when a beneficial interest is acquired (and not, if different, the time when the securities are conveyed or transferred).

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- (5) A benefit received on account of any disability (within the meaning of the Disability Discrimination Act 1995) of the employee is to be disregarded for the purposes of subsection (3)(c).
- (6) A benefit in money or money's worth received in consideration for or otherwise in connection with—
- (a) failing or undertaking not to acquire securities pursuant to the employment-related securities option, or
  - (b) granting or undertaking to grant to another person a right to acquire securities which are subject to the employment-related securities option or any interest in them,
- is to be regarded for the purposes of subsection (3)(c) as received in connection with the employment-related securities option.
- (7) For the purposes of section 476(5) (charge under Case VI of Schedule D) the relevant person in relation to a chargeable event is—
- (a) in the case of an event that is a chargeable event by virtue of subsection (3) (a), the person by whom the securities are acquired, and
  - (b) in the case of an event that is a chargeable event by virtue of subsection (3) (b) or (c), the person by whom the consideration or benefit is received.

#### **Textual Amendments**

**F34** Words in s. 477(3)(c) substituted (18.6.2004 with application in accordance with s. 90(5) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 90\(4\)](#)

#### **478 Amount of charge**

- (1) The taxable amount for the purposes of section 476 (charge on occurrence of chargeable event) is—
- AGDA
- where—
- AG is the amount of any gain realised on the occurrence of the chargeable event, and
- DA is the total of any deductible amounts.
- (2) Section 479 explains what is the amount of any gain realised on the occurrence of a chargeable event.
- (3) Section 480 specifies what are deductible amounts.

#### **479 Amount of gain realised on occurrence of chargeable event**

- (1) This section applies for the purposes of section 478 (amount of charge on occurrence of chargeable event).
- (2) The amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 477(3)(a) (acquisition of securities) is (subject to subsection (4))—

MVC

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- (3) In subsection (2)—
- MV is the market value of the securities that are acquired at the time when they are acquired, and
  - C is the amount of any consideration given for the securities that are acquired.
- (4) But the amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 477(3)(a) (acquisition of securities) is calculated—
- (a) if section 531 (enterprise management incentives: limitation of charge on exercise of option to acquire shares below market value) applies, in accordance with that section, and
  - (b) if section 532 (enterprise management incentives: modified tax consequences following disqualifying events) applies, in accordance with that section.
- (5) The amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 477(3)(b) (assignment or release of option) is the amount of the consideration given for the assignment or release.
- (6) The amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 477(3)(c) (receipt of benefit in connection with option) is the amount or market value of the benefit.
- (7) But if—
- (a) the consideration mentioned in subsection (5), or
  - (b) the benefit mentioned in subsection (6),
- consists (in whole or in part) in the provision of securities or an interest in securities the market value of which 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, its market value is to be taken to be what it would be but for the reduction.
- (8) The following are among the things that are, for the purposes of subsection (7), 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).
- (9) In subsection (8)(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.

#### **480 Deductible amounts**

- (1) This section applies for the purposes of section 478 (amount of charge on occurrence of chargeable event).
- (2) The amount of—
- (a) any consideration given for the acquisition of the employment-related securities option, and

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- (b) the amount of any expenses incurred in connection with the acquisition of securities, assignment, release or receipt which constitutes the chargeable event,  
 is a deductible amount.
- (3) Where in consequence of—
- (a) the acquisition of the employment-related securities option,
  - (b) the acquisition of securities pursuant to the employment-related securities option, or
  - (c) a transaction of which the acquisition of the employment-related securities option or the acquisition of securities pursuant to the employment-related securities option forms part,
- there is a reduction in the market value of any employment-related securities to which an associated person is beneficially entitled, the amount of the reduction is to be treated for the purposes of subsection (2) as consideration (or additional consideration) given for the acquisition of the employment-related securities option.
- (4) If an amount counts as employment income of the employee under section 526 (approved CSOP schemes: charge where option granted at a discount) in respect of the employment-related securities option, so much of that amount as is attributable to the shares in question is a deductible amount.
- (5) The following are also deductible amounts—
- (a) any amount that constituted earnings from the employment under Chapter 1 of Part 3 (earnings) in respect of the acquisition of the employment-related securities option,
  - (b) any amount that was treated as earnings from the employment under Chapter 10 of that Part (taxable benefits: residual liability to charge) in respect of the acquisition of the employment-related securities option, and
  - (c) the amount of any gain by a previous holder on an assignment of the employment-related securities option which would have been a deductible cost by virtue of subsection (2)(c) of section 479 (as originally enacted) on an exercise of the option at a time when that section was in force.
- (6) If there has been a previous chargeable event in relation to the employment-related securities option (or if section 476 or 477 as originally enacted applied to the option by virtue of an earlier event), so much of any deductible amount as was deducted in calculating the taxable amount on the occasion of that event is to be regarded as not being a deductible amount.
- (7) Sections 481 and 482 (deductible amounts in respect of secondary Class 1 contributions or special contribution met by the employee) specify further deductible amounts.

#### **481 Deductible amount in respect of secondary Class 1 contributions met by employee**

- (1) The amount calculated under subsection (2) is a deductible 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 contributions in respect of the gain, or



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- (b) an election having effect under paragraph 3B of Schedule 1 to that Act 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 the gain.
- (2) The amount is the sum of—
- (a) any amount that under the agreement referred to in subsection (1)(a) is recovered in respect of the gain by the secondary contributor before 5th June in the tax year following that in which the gain is realised, and
  - (b) the amount of any liability in respect of the gain 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 any liability in respect of the gain for the purposes of subsection (2)(b) is limited to the amount of the liability met before 5th June in the tax year following that in which the gain is realised.
- (4) Subsection (1) does not apply in respect of a liability to pay Class 1 contributions which is prevented from arising by virtue of section 2(1)(a) of the Social Security Contributions (Share Options) Act 2001 (liability to pay Class 1 contributions in respect of gains replaced by liability to pay special contribution).
- (5) In this section—
- “approval”, in relation to an election, means approval by the Board of Inland Revenue 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).

#### **482 Deductible amount in respect of special contribution met by employee**

- (1) The amount of the liability referred to in subsection (4) is a deductible amount if conditions A to D are met.
- (2) Condition A is that a notice in respect the employment-related securities option was given to the Board of Inland Revenue in accordance with section 1 of the Social Security Contributions (Share Options) Act 2001 before 11th August 2001.
- (3) Condition B is that the person, or one of the persons, who gave that notice is a person who (apart from that Act) was liable, or would have become liable, by virtue of an election under paragraph 3B of Schedule 1 to the Contributions and Benefits Act, to pay secondary Class 1 contributions in respect of an event which is a chargeable event for the purposes of section 476.
- (4) Condition C is that that person became liable to pay a special contribution under section 2 of the Social Security Contributions (Share Options) Act 2001 in respect of the employment-related securities option.
- (5) Condition D is that that person met that liability before 11th August 2001 or before the end of such further period as the Board of Inland Revenue directed under section 2(5) of that Act.

*Status: Point in time view as at 18/06/2004.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003, Part 7 is up to date with all changes known to be in force on or before 27 June 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)*

### *Supplementary provisions*

#### **483 Application of this Chapter where option exchanged for another**

- (1) This section applies if—
  - (a) the employment-related securities option (the “old option”) is assigned or released, and
  - (b) the whole or part of the consideration for the assignment or release consists of or includes another securities option (the “new option”).
- (2) For the purposes of section 479(5) (amount of gain realised by assigning or releasing option) the new option is not to be treated as consideration given for the assignment or release of the old option.
- (3) This Chapter applies to the new option as it applies to the old option.
- (4) For the purposes of section 480(2) (consideration for acquisition of option) the amount of the consideration given for the acquisition of the new option is to be treated as being the sum of—
  - (a) the amount by which the amount of the consideration given for the acquisition of the old option exceeds the amount of any consideration given for the assignment or release of the old option, apart from the new option, and
  - (b) any valuable consideration given for the acquisition of the new option, apart from the old option.
- (5) Two or more transactions are to be treated for the purposes of subsection (1) as a single transaction by which one option is assigned for a consideration which consists of or includes another option if—
  - (a) the transactions result in—
    - (i) a person ceasing to hold an option, and
    - (ii) that person or a connected person coming to hold another option, and
  - (b) one or more of the transactions is effected under arrangements to which two or more persons holding options, in respect of which there may be liability to tax under this Chapter, are parties.
- (6) Subsection (5) applies regardless of the order in which the assignments and the acquisition occur.

#### **484 Definitions**

- (1) In this Chapter—
  - “securities”, and
  - “securities option”,
 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 consideration given for anything.
- (4) In this Chapter “employment-related securities” has the same meaning as in Chapter 1 of this Part (see section 421B(8)).
- (5) In this Chapter—

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“the acquisition”,  
“the employee”,  
“the employer”,  
“the employment”, and  
“employment-related securities option”,  
have the meaning indicated in section 471(5).

(6) In this Chapter “associated person” has the meaning indicated in section 472.

(7) In this Chapter—

“secondary Class 1 contributions” has the same meaning as in the Contributions and Benefits Act (see section 1 of that Act), and

“the Contributions and Benefits Act” means SSCBA 1992 or SSCB(NI)A 1992.]

### *Supplementary provisions*

#### **<sup>F32</sup>485 Application of this Chapter where share option exchanged for another**

.....

#### **<sup>F32</sup>486 Duty to notify matters relating to share options**

.....

#### **<sup>F32</sup>487 Minor definitions**

.....

## **CHAPTER 6**

### **APPROVED SHARE INCENTIVE PLANS**

#### *Introduction*

#### **488 Approved share incentive plans (SIPs)**

(1) This Chapter provides—

- (a) for the approval of share incentive plans (“SIPs”) by the Inland Revenue,
- (b) for exemptions from income tax in connection with shares obtained under those plans,
- (c) for amounts to count as employment income in certain circumstances in connection with such plans, and
- (d) for the making of PAYE deductions in connection with such amounts.

(2) Schedule 2 contains the requirements that have to be met for a SIP to be approved, together with—

- (a) the approval procedure, and
- (b) provisions relating to the administration and operation of a SIP.

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- (3) The provisions of—
- (a) this and the following sections of this Chapter,
  - (b) Schedule 2, and
  - (c) the provisions mentioned in section 515 (tax advantages and charges under other Acts),
- together constitute “the SIP code”.
- (4) In the SIP code—
- “approved” means approved by the Inland Revenue under Schedule 2, and “approval” has a corresponding meaning;
- “PAYE deduction” means a deduction required by PAYE regulations;
- a “share incentive plan” (or “SIP” for short) means a plan established by a company providing—
- (a) for shares to be appropriated to employees without payment (“free shares”), or
  - (b) for shares to be acquired on behalf of employees out of sums deducted from their salary (“partnership shares”).
- (5) Other expressions used in the SIP code and contained in the index at the end of Schedule 2 have the meaning indicated by the index.

#### *Scope of tax advantages*

### **489 Operation of tax advantages in connection with approved SIP**

- (1) Sections 490 to 499 apply for income tax purposes in connection with shares awarded under an approved SIP.
- (2) But those sections do not apply to an individual if, at the time of the award of shares in question, the earnings from the eligible employment are not (or would not be if there were any) general earnings to which any of the charging provisions of Chapter 4 or 5 of Part 2 apply.
- (3) “The eligible employment” means the employment which results in the individual meeting the employment requirement in relation to the plan.
- [<sup>F35</sup>(4) And those sections do not apply if the main purpose (or one of the main purposes) of the arrangements under which the shares in question are awarded or acquired is the avoidance of tax or national insurance contributions.]

#### **Textual Amendments**

- F35** S. 489(4) 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\(4\)](#)

#### *Tax advantages connected with award of shares*

### **490 No charge on award or acquisition of shares: general**

- (1) This section applies—

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- (a) on the award to an employee of free, matching or partnership shares under the plan, or
  - (b) on the acquisition on behalf of an employee of dividend shares under the plan.
- (2) The employee is not liable to income tax on the value of the beneficial interest in the shares that passes to the employee at the time of the award or acquisition.

**F36 491 No charge on award of shares as taxable benefit**

.....

**Textual Amendments**

**F36** S. 491 repealed (with effect in accordance with Sch. 22 para. 26(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 26\(1\)](#), [Sch. 43 Pt. 3\(4\)](#)

**492 No charge on partnership share money deducted from salary**

- (1) An employee is not liable to income tax under Part 2 on any amount of the employee's salary which is deducted as partnership share money under a partnership share agreement.
- (2) But the deduction of partnership share money is to be disregarded for the purpose of ascertaining—
  - (a) the amount of the employee's remuneration for the purposes of Chapter 1 of Part 14 of ICTA (retirement benefit schemes), or
  - (b) the amount of the employee's relevant earnings for the purposes of Chapter 3 or 4 of that Part of that Act (retirement annuities or personal pension schemes).

**493 No charge on acquisition of dividend shares**

- (1) A participant is not liable to income tax on the amount applied by the trustees in acquiring dividend shares on behalf of the participant.
- (2) The participant has no entitlement to a tax credit in respect of the amount so applied.
- (3) Section 234A(4) of ICTA (information relating to distributions to be provided by nominee) does not apply to any amount applied by the trustees in acquiring dividend shares on behalf of a participant.
- (4) Subsections (1) and (2) do not affect—
  - (a) any charge under section 68B(2) or 251C(1) of ICTA (charge under Case V of Schedule D or Schedule F on dividend shares ceasing to be subject to plan), or
  - (b) any entitlement to a tax credit in respect of the amount so charged.
- (5) Subsection (3) is subject to paragraph 80(4)(c) of Schedule 2 (information required where dividend shares cease to be subject to plan).

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### *Tax advantages connected with holding of shares*

#### **F37 494 No charge on removal of restrictions applying to shares**

.....

##### **Textual Amendments**

**F37** S. 494 repealed (with effect in accordance with Sch. 22 para. 27(2) of the amending Act and otherwise 1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 27\(1\)](#), [Sch. 43 Pt. 3\(4\)](#); [S.I. 2003/1997](#), art. 2

#### **F38 495 No charge on increase in value of shares of dependent subsidiary**

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##### **Textual Amendments**

**F38** S. 495 repealed (16.4.2003 with effect in accordance with Sch. 22 para. 28(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 28\(1\)](#), [Sch. 43 Pt. 3\(4\)](#)

#### **496 No charge on cash dividend retained for reinvestment**

- (1) A participant is not liable to income tax in respect of an amount retained under paragraph 68(2) of Schedule 2 (amount of cash dividend not reinvested).
- (2) The participant has no entitlement to a tax credit in respect of an amount so retained.
- (3) This section does not affect any charge under—
  - (a) section 68B(1) or 251B(1) of ICTA (charge under Case V of Schedule D or Schedule F where cash dividend retained and then later paid out), or
  - (b) section 68B(2) or 251C(1) of ICTA (charge under Case V of Schedule D or Schedule F on dividend shares ceasing to be subject to plan),
 or affect any tax credit in respect of an amount so charged.

*Tax advantages connected with shares ceasing to be subject to plan*

#### **497 Limitations on charges on shares ceasing to be subject to plan**

- (1) No liability to income tax arises on free or matching shares ceasing to be subject to the plan, except as provided by—
  - (a) section 505 (charge on free or matching shares ceasing to be subject to plan), or
  - (b) section 507 (charge on disposal of beneficial interest during holding period).
- (2) No liability to income tax arises on partnership shares ceasing to be subject to the plan, except as provided by section 506 (charge on partnership shares ceasing to be subject to plan).

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*Status: Point in time view as at 18/06/2004.*

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- (3) No liability to income tax arises on dividend shares ceasing to be subject to the plan, except as provided by section 68B(2) or 251C(1) of ICTA (charge under Case V of Schedule D or Schedule F on dividend shares ceasing to be subject to plan).

#### **498 No charge on shares ceasing to be subject to plan in certain circumstances**

- (1) A participant is not liable to income tax on shares ceasing to be subject to the plan if—
- (a) they cease to be so subject on the participant ceasing to be in relevant employment, and
  - (b) subsection (2) applies.
- (2) This subsection applies if the participant ceases to be in relevant employment—
- (a) because of injury or disability,
  - (b) on being dismissed by reason of redundancy,
  - (c) by reason of a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 1981 (S.I. 1981/1794) apply,
  - (d) if the relevant employment is employment by an associated company (see paragraph 95(2) of Schedule 2), by reason of a change of control or other circumstances ending that company's status as an associated company,
  - (e) by reason of the participant's retirement on or after reaching the specified retirement age (see paragraph 98 of Schedule 2), or
  - (f) on the participant's death.

*Tax advantages: supplementary*

#### **499 No charge in respect of incidental expenditure**

An employee is not liable to income tax in respect of incidental expenditure of—

- (a) the trustees,
- (b) the company which established the plan, or
- (c) (if different) the employer,

in operating the plan.

*Scope of tax charges*

#### **500 Operation of tax charges in connection with approved SIP**

- (1) Sections 501 to 508 apply for income tax purposes in connection with shares awarded under an approved SIP.
- (2) But those sections do not apply to an individual if, at the time of the award of shares in question, the earnings from the eligible employment are not (or would not be if there were any) general earnings to which any of the charging provisions of Chapter 4 or 5 of Part 2 apply.
- (3) “The eligible employment” means the employment which results in the individual meeting the employment requirement in relation to the plan.

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### *Charges connected with holding of shares*

#### **501 Charge on capital receipts in respect of plan shares**

- (1) This section applies if conditions A and B are met.
- (2) Condition A is that a capital receipt is received by a participant in respect of, or by reference to, any of the participant's plan shares.
- (3) Condition B is that the plan shares in respect of, or by reference to, which the capital receipt is received are—
  - (a) free, matching or partnership shares that were awarded to the participant less than 5 years before the participant received the capital receipt, or
  - (b) dividend shares that were acquired on behalf of the participant less than 3 years before the participant received the capital receipt.
- (4) If this section applies, the amount or value of the capital receipt counts as employment income of the participant for the relevant tax year.
- (5) The “relevant tax year” is the tax year in which the participant receives the capital receipt.
- (6) This section does not apply if the capital receipt is received by the participant's personal representatives after the death of the participant.
- (7) Section 502 explains what is meant by a “capital receipt”.

#### **502 Meaning of “capital receipt” in section 501**

- (1) This section applies for determining whether any money or money's worth is a “capital receipt” for the purposes of section 501.
- (2) The general rule is that any money or money's worth is a “capital receipt” for the purposes of section 501.
- (3) The general rule is subject to the following exceptions.
- (4) Money or money's worth is not a capital receipt for the purposes of section 501 to the extent that—
  - (a) it constitutes income in the hands of the recipient for the purposes of income tax or would do so but for sections 489 to 498 (SIPs: tax advantages),
  - (b) it consists of the proceeds of disposal of the plan shares mentioned in section 501, or
  - (c) it consists of new shares within the meaning of paragraph 87 of Schedule 2 (company reconstructions).
- (5) If, as a result of a direction given by or on behalf of the participant for the purposes of paragraph 77 of Schedule 2 (power of trustees to raise funds to subscribe for rights issues), the trustees—
  - (a) dispose of some of the rights under a rights issue, and
  - (b) use the proceeds of that disposal to exercise other such rights,
 the money or money's worth constituting the proceeds of that disposal is not a capital receipt for the purposes of section 501.



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### **503 Charge on partnership share money paid over to employee**

- (1) Any amount paid over to an individual under any of the provisions of Schedule 2 mentioned in subsection (2) counts as employment income of the individual for the relevant tax year.
- (2) The provisions are—
  - paragraph 46(5) (deductions in excess of permitted maximum amount),
  - paragraph 50(5)(b) or paragraph 52(6)(b) (surplus partnership share money remaining after acquisition of shares),
  - paragraph 52(7) (partnership share money paid over on individual ceasing to be in relevant employment),
  - paragraph 52(8) (partnership share money paid over where accumulation period brought to an end by event specified in plan),
  - paragraph 55(3) (partnership share money paid over on withdrawal from partnership share agreement), or
  - paragraph 56 (partnership share money paid over on withdrawal of plan approval or termination of plan).
- (3) The “relevant tax year” is the tax year in which the amount is paid over.

### **504 Charge on cancellation payments in respect of partnership share agreement**

- (1) This section applies if an individual who has entered into a partnership share agreement receives any money or money’s worth in respect of the cancellation of the agreement.
- (2) The amount of the money or the value of the money’s worth counts as employment income of the individual for the relevant tax year.
- (3) The “relevant tax year” is the tax year in which the individual receives the money or money’s worth.

*Charges connected with shares ceasing to be subject to plan*

### **505 Charge on free or matching shares ceasing to be subject to plan**

- (1) When free or matching shares cease to be subject to the plan, there may be an amount that counts as employment income of the participant depending on the period that has elapsed between—
  - (a) the date when the shares were awarded to the participant (“the award date”), and
  - (b) the date when they cease to be subject to the plan (“the exit date”).
- (2) If the period is less than 3 years, the market value of the shares at the exit date counts as employment income of the participant for the relevant tax year (see subsection (5)).
- (3) If the period is 3 years or more but less than 5 years, whichever is the lesser of—
  - (a) the market value of the shares at the award date, and
  - (b) the market value of the shares at the exit date,counts as employment income of the participant for the relevant tax year (see subsection (5)).

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- (4) Where—
- (a) subsection (3) applies, and
  - (b) the applicable amount is the market value of the shares at the award date, the tax due is reduced by the amount or aggregate amount of any tax paid by virtue of section 501 (charge on capital receipts in respect of plan shares) on any capital receipts in respect of the shares.
- [<sup>F39</sup>(4A) Any tax due under subsection (2) or (3) is reduced by the amount or aggregate amount of any tax paid by virtue of Chapter 3B of this Part in relation to the shares.]
- (5) The “relevant tax year” is the tax year in which the exit date falls.
- (6) No liability to tax arises by virtue of this section—
- (a) on the forfeiture of free or matching shares,
  - (b) if section 498 (no charge on shares ceasing to be subject to plan in certain circumstances) applies, or
  - (c) if section 507 (charge on disposal of beneficial interest in holding period) applies.

#### **Textual Amendments**

**F39** S. 505(4A) 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\(5\)](#)

### **506 Charge on partnership shares ceasing to be subject to plan**

- (1) When partnership shares cease to be subject to the plan, there may be an amount that counts as employment income of the participant depending on the period that has elapsed between—
- (a) the acquisition date in respect of those shares (as defined by paragraph 50(4) or, as the case may be, paragraph 52(5) of Schedule 2), and
  - (b) the date when they cease to be subject to the plan (“the exit date”).
- (2) If the period is less than 3 years, the market value of the shares at the exit date counts as employment income of the participant for the relevant tax year (see subsection (5)).
- (3) If the period is 3 years or more but less than 5 years, whichever is the lesser of—
- (a) the amount of partnership share money used to acquire the shares, and
  - (b) the market value of the shares at the exit date,
- counts as employment income of the participant for the relevant tax year (see subsection (5)).
- (4) Where—
- (a) subsection (3) applies, and
  - (b) the applicable amount is the amount of partnership share money used to acquire the shares,
- the tax due is reduced by the amount or aggregate amount of any tax paid by virtue of section 501 (charge on capital receipts in respect of plan shares) on any capital receipts in respect of the shares.

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[<sup>F40</sup>(4A) Any tax due under subsection (2) or (3) is reduced by the amount or aggregate amount of any tax paid by virtue of Chapter 3B of this Part in relation to the shares.]

(5) The “relevant tax year” is the tax year in which the exit date falls.

(6) No liability to income tax arises by virtue of this section if section 498 (no charge on shares ceasing to be subject to plan in certain circumstances) applies.

#### Textual Amendments

**F40** S. 506(4A) 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(5)

### 507 Charge on disposal of beneficial interest during holding period

- (1) This section applies if—
  - (a) free or matching shares cease to be subject to the plan at any time during the holding period for those shares, and
  - (b) this occurs as a result of the participant assigning, charging or otherwise disposing of the participant’s beneficial interest in the shares in breach of obligations under paragraph 36(1)(b) of Schedule 2 (restrictions relating to disposals within holding period).
- (2) The market value of the shares at the date when they cease to be subject to the plan counts as employment income of the participant for the relevant tax year.
- (3) The “relevant tax year” is the tax year in which that date falls.

### 508 Identification of shares ceasing to be subject to plan

- (1) For the purpose of determining any liability to tax arising by virtue of the SIP code in respect of any of a participant’s shares ceasing to be subject to the plan—
  - (a) shares are to be taken as ceasing to be subject to the plan in the order in which they were awarded to the participant under the plan, and
  - (b) where shares are awarded to the participant on the same day, the shares are to be treated as ceasing to be subject to the plan in the order which gives rise to the lowest charge to income tax on the participant.
- (2) For the purposes of subsection (1) dividend shares are “awarded” to a participant when the trustees acquire them on behalf of, or appropriate them to, the participant.

PAYE

### 509 Modification of section 696 where charge on shares ceasing to be subject to plan

- (1) Where—
  - (a) as a result of shares ceasing to be subject to an approved SIP, there is an amount that counts as employment income of a participant by virtue of the SIP code, and
  - (b) the shares are readily convertible assets,section 696 (readily convertible assets) applies as follows.

*Status: Point in time view as at 18/06/2004.*

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- (2) Section 696 applies as if the participant (“P”) were being provided with PAYE income in the form of those shares—
- (a) at the time when the shares cease to be subject to the plan, and
  - (b) in respect of the relevant employment in which P is employed at that time (or, if P is not then employed in relevant employment, the relevant employment in which P was last employed before that time).
- (3) In addition, subsection (2) of section 696 applies as if the reference in that subsection to the amount of income likely to be PAYE income in respect of the provision of the asset were a reference to the amount which is likely to count as employment income by virtue of the SIP code as a result of the shares ceasing to be subject to the plan.
- (4) In this section “readily convertible asset” has the same meaning as in section 696 (see sections 701 and 702), but this is subject to <sup>[F41]</sup>subsections (5) and (6)].
- (5) In determining for the purposes of this section (and of section 696 in its application in accordance with this section) whether the shares are readily convertible assets, any market for the shares which—
- (a) is created by virtue of the trustees acquiring shares for the purposes of the plan, and
  - (b) exists solely for the purposes of the plan,
- is to be disregarded.
- <sup>[F42]</sup>(6) In determining for the purposes of this section (and of section 696 in its application in accordance with this section) whether the shares are readily convertible assets, section 702 has effect with the omission of subsections (5A) to (5D).]

#### Textual Amendments

- F41** Words in s. 509(4) substituted (10.7.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 11\(2\)](#)
- F42** S. 509(6) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 11\(3\)](#)

### 510 Payments by trustees to employer company on shares ceasing to be subject to plan

- (1) This section applies if, as a result of any shares (“the relevant shares”) ceasing to be subject to an approved SIP—
- (a) there is an amount that counts as employment income of a participant by virtue of the SIP code, and
  - (b) an obligation to make a PAYE deduction arises in respect of that amount.
- (2) The trustees must pay to the employer company a sum which is sufficient to enable the employer company to discharge that obligation.
- (3) Subsection (2) is subject to—
- (a) subsection (4), and
  - (b) section 511 (PAYE deductions to be made by trustees on shares ceasing to be subject to plan).
- (4) Subsection (2) only applies if, or to the extent that, the plan does not require the participant to pay the employer company a sum which is sufficient to discharge the obligation mentioned in subsection (1)(b).

*Status: Point in time view as at 18/06/2004.*

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- (5) Section 710(1) (notional payments: accounting for tax) has effect as if it required the deduction of income tax to be made from any sum or sums received by the employer company—
  - (a) from the trustees under subsection (2), or
  - (b) from the participant in accordance with a requirement of the plan, as mentioned in subsection (4).
- (6) After making the necessary PAYE deduction from the sum or sums received as mentioned in subsection (5), the employer company must pay any remaining amount to the participant.
- (7) In this section “the employer company” means—
  - (a) the company which employs the participant in relevant employment at the time when the relevant shares cease to be subject to the plan, or
  - (b) if the participant is not then employed in relevant employment, the company which last employed the participant in relevant employment before that time, so long as that company is one to which PAYE regulations apply at that time.

#### **511 PAYE deductions to be made by trustees on shares ceasing to be subject to plan**

- (1) This section applies if, as a result of any shares ceasing to be subject to an approved SIP—
  - (a) there is an amount that counts as employment income of a participant by virtue of the SIP code, and
  - (b) condition A or B is met.
- (2) Condition A is that the Inland Revenue—
  - (a) are of the opinion that it is impracticable for the employer company (within the meaning of section 510) to make a PAYE deduction, and
  - (b) accordingly direct that this section is to apply.
- (3) Condition B is that there is no company that qualifies as the employer company (within the meaning of that section).
- (4) If this section applies—
  - (a) section 510(2) does not apply, and
  - (b) the trustees must make a PAYE deduction in respect of the taxable equivalent as if the participant were a former employee of the trustees.
- (5) The “taxable equivalent” means an amount equal to that mentioned in subsection (1).
- (6) If this section applies, section 689 (employee of non-UK employer) does not apply.

#### **512 Disposal of beneficial interest by participant**

- (1) This section applies if—
  - (a) a participant (“P”) disposes of P’s beneficial interest in any of P’s plan shares to the trustees, and
  - (b) the trustees are, as a result of paragraph 6 of Schedule 7D to TCGA 1992 (deemed disposal by trustees on disposal of beneficial interest), treated as having disposed of the shares in question.

*Status: Point in time view as at 18/06/2004.*

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- (2) If this section applies, sections 510 and 511 apply as if the consideration payable by the trustees to the participant on the disposal had been received by the trustees as the proceeds of disposal of plan shares.

### **513 Capital receipts: payments by trustees to employer company**

- (1) This section applies if the trustees receive a sum of money which constitutes (or forms part of) a capital receipt which, by virtue of the SIP code, counts as employment income of a participant when it is received by the participant.
- (2) Out of that sum of money the trustees must pay to the employer company an amount equal to the amount of employment income.
- (3) The employer company must then pay over that amount to the participant, but when doing so must make a PAYE deduction.
- (4) This section is subject to section 514 (capital receipts: deductions to be made by trustees).
- (5) In this section “the employer company” means—
- (a) the company which employs the participant in relevant employment at the time when the trustees receive the sum mentioned in subsection (1), or
  - (b) if the participant is not then employed in relevant employment, the company which last employed the participant in relevant employment before that time, so long as that company is one to which PAYE regulations apply at that time.

### **514 Capital receipts: PAYE deductions to be made by trustees**

- (1) This section applies if—
- (a) the trustees receive a sum of money which constitutes (or forms part of) a capital receipt which, by virtue of the SIP code, counts as employment income of a participant when it is received by the participant, and
  - (b) either condition A or B is met.
- (2) Condition A is that the Inland Revenue—
- (a) are of the opinion that it is impracticable for the employer company (within the meaning of section 513) to make a PAYE deduction, and
  - (b) accordingly direct that this section is to apply.
- (3) Condition B is that there is no company that qualifies as the employer company (within the meaning of that section).
- (4) If this section applies, the trustees must, when paying the capital receipt over to the participant, make a PAYE deduction in respect of the taxable equivalent as if the participant were a former employee of the trustees.
- (5) The “taxable equivalent” means an amount equal to the amount which counts as employment income as mentioned in subsection (1)(a).
- (6) If this section applies, section 689 (employee of non-UK employer) does not apply.

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*Status: Point in time view as at 18/06/2004.*

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### *Other tax consequences*

## **515 Tax advantages and charges under other Acts**

- (1) The following provisions of ICTA relate to SIPs—
  - (a) sections 68A to 68C and 251A to 251D (which provide for amounts to be charged to income tax under Schedule D Case V or Schedule F where—
    - (i) dividends are paid out to participants under an approved SIP, or
    - (ii) dividend shares cease to be subject to the plan in certain circumstances),
  - (b) sections 686B and 686C (which provide for section 686 of that Act (accumulation and discretionary trusts: special rates of tax) not to apply to income of the trustees of an approved SIP in certain circumstances), and
  - (c) Schedule 4AA (which makes provision about deductions allowed in calculating trade profits for corporation tax purposes in respect of certain of a company's expenses relating to—
    - (i) providing shares for the purposes of an approved SIP, or
    - (ii) the establishment or operation of the plan).
- (2) SIPs are also dealt with in—
  - (a) Part 1 of Schedule 7D to TCGA 1992 (which provides for relief from capital gains tax for the trustees and for participants in relation to an approved SIP in certain circumstances, including where shares cease to be subject to the plan), and
  - (b) section 95 of FA 2001 (which contains relief from stamp duty and stamp duty reserve tax for transfers of partnership or dividend shares).
- (3) The references in this section to ICTA, TCGA 1992 and FA 2001 are to those Acts as amended by Schedule 6 to this Act.

## **CHAPTER 7**

### **APPROVED SAYE OPTION SCHEMES**

#### *Introduction*

## **516 Approved SAYE option schemes**

- (1) This Chapter provides—
  - (a) for the approval of SAYE option schemes by the Inland Revenue, and
  - (b) for exemptions from income tax in connection with share options granted under those schemes.
- (2) Schedule 3 contains the requirements that have to be met for an SAYE option scheme to be approved, together with the approval procedure.
- (3) The provisions of—
  - (a) this and the following sections of this Chapter,
  - (b) Schedule 3, and

*Status: Point in time view as at 18/06/2004.*

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- (c) Part 2 of Schedule 7D to TCGA 1992 (approved SAYE option schemes: amount of consideration on exercise of option), together constitute “the SAYE code”.
- (4) In the SAYE code—
- “approved” means approved by the Inland Revenue under Schedule 3 (see paragraph 1 of the Schedule);
- “SAYE option scheme” means a scheme (commonly referred to as an SAYE share option scheme) which is established by a company and provides—
- (a) for share options to be granted to employees and directors, and
- (b) for the shares acquired by the exercise of the share options to be paid for in the way mentioned in paragraph 24 of Schedule 3 (payments for shares to be linked to approved savings schemes);
- “share option” means a right to acquire shares in a company;
- “shares” includes stock.
- (5) Other expressions used in the SAYE code and contained in the index at the end of Schedule 3 have the meaning indicated by the index.

## 517 Share options to which this Chapter applies

- (1) This Chapter applies to a share option granted to an individual—
- (a) in accordance with the provisions of an approved SAYE option scheme, and
- (b) by reason of the individual’s office or employment as a director or employee of a company.
- (2) The individual may be a director or employee of the company whose shares are the subject of the share option, or of some other company.

### *Tax advantages*

## <sup>F43</sup>518 No charge in respect of receipt of option

.....

### **Textual Amendments**

**F43** S. 518 repealed (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 29\(1\)\(2\)](#), [Sch. 43 Pt. 3\(4\)](#); [S.I. 2003/1997, art. 2](#)

## 519 No charge in respect of exercise of option

- (1) No liability to income tax arises in respect of the exercise of the share option if—
- (a) the individual exercises it in accordance with the provisions of the SAYE option scheme at a time when the scheme is approved, and
- (b) condition A or B is met [<sup>F44</sup>and
- (c) the avoidance of tax or national insurance contributions is not the main purpose (or one of the main purposes) of any arrangements under which the option was granted or is exercised.]



*Status: Point in time view as at 18/06/2004.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003, Part 7 is up to date with all changes known to be in force on or before 27 June 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)*

(2) Condition A is that the option is exercised on or after the third anniversary of the date on which it was granted.

(3) Condition B is that the option—

- (a) is exercised before the third anniversary of the date on which it was granted, and
- (b) is so exercised otherwise than by virtue of a provision included in the scheme under—
  - paragraph 34(5) of Schedule 3 (exercise of option where scheme-related employment ends), or
  - paragraph 37 of that Schedule (exercise of option where certain company events occur).

<sup>F45</sup>(4) .....

(5) In Schedule 3—

- (a) paragraph 32 provides for the exercise of an option where the holder has died, and
- (b) paragraph 42(3) provides for an SAYE option scheme to be treated as approved at the time when an option is exercised even though approval of the scheme has been previously withdrawn.

**Textual Amendments**

- F44** S. 519(1)(c) and word 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(6)**
- F45** S. 519(4) repealed (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 30\(1\)\(2\)](#), **Sch. 43 Pt. 3(4)**; [S.I. 2003/1997](#), art. 2

<sup>F46</sup>**520 No charge in respect of post-acquisition benefits**

.....

**Textual Amendments**

- F46** S. 520 repealed (16.4.2003 with effect in accordance with Sch. 22 para. 31(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 31\(1\)](#), **Sch. 43 Pt. 3(4)**

**CHAPTER 8**

APPROVED CSOP SCHEMES

*Introduction*

**521 Approved CSOP schemes**

(1) This Chapter provides—

- (a) for the approval of CSOP schemes by the Inland Revenue,

*Status: Point in time view as at 18/06/2004.*

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- (b) for exemptions from income tax in connection with share options granted under those schemes, and
  - (c) for amounts to count as employment income in certain circumstances in connection with such options.
- (2) Schedule 4 contains the requirements that have to be met for a CSOP scheme to be approved, together with the approval procedure.
- (3) The provisions of—
- (a) this and the following sections of this Chapter,
  - (b) Schedule 4, and
  - (c) Part 3 of Schedule 7D to TCGA 1992 (approved CSOP schemes: amount of consideration on exercise of option),
- together constitute “the CSOP code”.
- (4) In the CSOP code—
- “approved” means approved by the Inland Revenue under Schedule 4 (see paragraph 1 of the Schedule);
  - “CSOP scheme” means a scheme (commonly referred to as a company share option plan) which—
    - (a) is established by a company,
    - (b) provides for share options to be granted to employees and directors, and
    - (c) is not an SAYE option scheme (within the meaning of the SAYE code: see section 516(4));
  - “share option” means a right to acquire shares in a company;
  - “shares” includes stock.
- (5) Other expressions used in the CSOP code and contained in the index at the end of Schedule 4 have the meaning indicated by the index.

## **522 Share options to which this Chapter applies**

- (1) This Chapter applies to a share option granted to an individual—
- (a) in accordance with the provisions of an approved CSOP scheme, and
  - (b) by reason of the individual’s office or employment as a director or employee of a company.
- (2) The individual may be a director or employee of the company whose shares are the subject of the share option, or of some other company.

### *Tax advantages*

## <sup>F47</sup>**523 No charge in respect of receipt of option**

.....

### **Textual Amendments**

**F47** S. 523 repealed (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 32\(1\)\(2\)](#), [Sch. 43 Pt. 3\(4\)](#); [S.I. 2003/1997, art. 2](#)

*Status: Point in time view as at 18/06/2004.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003, Part 7 is up to date with all changes known to be in force on or before 27 June 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)*

## 524 No charge in respect of receipt of option

- (1) No liability to income tax arises in respect of the exercise of the share option if—
- (a) the individual exercises it in accordance with the provisions of the CSOP scheme at a time when the scheme is approved, and
  - <sup>F48</sup>(b) Condition A or B is met<sup>F49</sup> and
  - (c) the avoidance of tax or national insurance contributions is not the main purpose (or one of the main purposes) of any arrangements under which the option was granted or is exercised.]

<sup>F50</sup>(2) Condition A is that the option is exercised—

- (a) on or after the third anniversary of the date on which it was granted, but
- (b) not later than the tenth anniversary of that date.

(2A) Condition B is that the option—

- (a) is exercised before the third anniversary of the date on which it was granted, and
- (b) is so exercised by virtue of a provision included in the scheme under paragraph 24 of Schedule 4 (exercise of options after ceasing to be director or employee) in circumstances in which subsection (2B) applies.

(2B) This subsection applies if the individual exercising the option—

- (a) has ceased to be a full-time director or qualifying employee of the scheme organiser (or, in the case of a group scheme, a constituent company) because of injury, disability, redundancy or retirement, and
- (b) exercises the option within 6 months of the day on which he ceases to be such a director or employee.

(2C) In subsection (2B)—

“redundancy” means redundancy within the meaning of ERA 1996 or ER(NI)O 1996, and

“retirement” means retirement on or after reaching a retirement age specified in the scheme.]

<sup>F50</sup>(3) . . . . .

<sup>F51</sup>(4) . . . . .

- (5) Paragraph 25 of Schedule 4 provides for the exercise of an option where the holder has died.

### Textual Amendments

- F48** S. 524(1)(b) substituted (with effect in accordance with Sch. 21 para. 14(5) of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 21 para. 14\(2\)](#)
- F49** S. 524(1)(c) and preceding word 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\(7\)](#)
- F50** S. 524(2)-(2C) substituted for s. 524(2)(3) (with effect in accordance with Sch. 21 para. 14(5) of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 21 para. 14\(3\)](#)
- F51** S. 524(4) repealed (1.9.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 33\(1\)\(2\), Sch. 43 Pt. 3\(4\); S.I. 2003/1997, art. 2](#)

*Status: Point in time view as at 18/06/2004.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003, Part 7 is up to date with all changes known to be in force on or before 27 June 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)*

**F52 525 No charge in respect of post-acquisition benefits**

.....

**Textual Amendments**

**F52** S. 525 repealed (16.4.2003 with effect in accordance with Sch. 22 para. 34(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 34\(1\)](#), [Sch. 43 Pt. 3\(4\)](#)

*Tax charge*

**526 Charge where option granted at a discount**

- (1) This section applies if, at the time when the share option is granted to the individual, the aggregate of—
  - (a) the amount or value of any consideration given by the individual for the grant of the option, and
  - (b) the amount payable by the individual, on exercising the option, in order to acquire the maximum number of shares that may be acquired under it,
 is less than the market value of the same quantity of issued shares of the same class.
- (2) The amount of the difference counts as employment income of the individual for the relevant tax year.
- (3) The “relevant tax year” is the tax year in which the option is granted to the individual.
- (4) [<sup>F53</sup>Section 480(4) (gain realised on acquisition of securities pursuant to option etc) provides for a deduction] to be made to take account of amounts that count as employment income under this section.

**Textual Amendments**

**F53** Words in s. 526(4) substituted (with effect in accordance with Sch. 22 para. 35(2) of the amending Act, otherwise 1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 35\(1\)](#); [S.I. 2003/1997, art. 2](#)

**CHAPTER 9**

ENTERPRISE MANAGEMENT INCENTIVES

*Introduction*

**527 Enterprise management incentives: qualifying options**

- (1) This Chapter provides—
  - (a) for share options notified to the Inland Revenue to be qualifying options for the purposes of the EMI code, and
  - (b) for exemptions and reliefs from income tax in connection with qualifying options.

*Status: Point in time view as at 18/06/2004.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003, Part 7 is up to date with all changes known to be in force on or before 27 June 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)*

- (2) Schedule 5 contains the requirements that have to be met for a share option to be a qualifying option, together with the notification procedure.
- (3) The provisions of—
  - (a) this and the following sections of this Chapter,
  - (b) Schedule 5, and
  - (c) Part 4 of Schedule 7D to TCGA 1992 (enterprise management incentives: capital gains tax consequences of exercise of qualifying option),together constitute “the EMI code”.
- (4) In the EMI code—

“qualifying option” means a share option—

  - (a) in relation to which the requirements of Schedule 5 are met at the time when the option is granted, and
  - (b) which is notified to the Inland Revenue in accordance with Part 7 of that Schedule;

“replacement option” means an option within paragraph 41(4) of that Schedule (grant of replacement option in connection with company reorganisations);

“share option” means a right to acquire shares in a company;

and any reference to the requirements of Schedule 5 is to the requirements set out in paragraph 1(3) of that Schedule.
- (5) Other expressions used in the EMI code and contained in the index at the end of Schedule 5 have the meaning indicated by the index.

*Tax advantages: receipt of option*

<sup>F54</sup>**528 No charge on receipt of qualifying option**

.....

**Textual Amendments**

**F54** S. 528 repealed (1.9.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 36\(1\)\(2\), Sch. 43 Pt. 3\(4\); S.I. 2003/1997, art. 2](#)

*Tax advantages: exercise of option*

**529 Scope of tax advantages: option must be exercised within 10 years**

- (1) Sections 530 to 540 apply in connection with the exercise of a qualifying option.
- (2) But those sections only apply in cases where the option is exercised on or before the tenth anniversary of—
  - (a) the date of the grant of the option, or
  - (b) if it is a replacement option, the date of the grant of the original option.
- (3) In the EMI code “the original option” means—

*Status: Point in time view as at 18/06/2004.*

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- (a) where there has been one replacement option, the option that that option replaced, or
- (b) where there have been two or more replacement options, the option that the first of them replaced.

### **530 No charge on exercise of option to acquire shares at market value**

- (1) This section applies if the option is to acquire shares at not less than their market value—
  - (a) at the time when the option is granted, or
  - (b) if it is a replacement option, at the time when the original option was granted.
- (2) If this section applies, no liability to income tax arises by virtue of section 476 (charge on exercise etc. of option by employee) in respect of the exercise of the option.
- (3) This section has effect subject to section 532 (modified tax consequences following disqualifying events).

### **531 Limitation of charge on exercise of option to acquire shares below market value**

- (1) This section applies if the option is to acquire shares at less than their market value—
  - (a) at the time when the option is granted, or
  - (b) if it is a replacement option, at the time when the original option was granted, or at nil cost.
- (2) If this section applies, the section 476 gain is—

$$CMV - (ACO + ACS)$$

where—

CMV is the chargeable market value,

ACO is the amount or value of the consideration given for the grant of the option, and

ACS is the amount, if any, for which the shares are acquired.

- (3) “The chargeable market value” means—
  - (a) the market value of the shares—
    - (i) at the time when the option was granted, or
    - (ii) if it is a replacement option, at the time when the original option was granted, or
  - (b) the market value of the shares at the time when the option is exercised, whichever is lower.
- (4) In this section “the section 476 gain” means the amount [<sup>F55</sup>under section 478 (amount of charge under section 476) is to be regarded as the taxable amount for the purposes of section 476 in respect of the acquisition of the shares pursuant to the option.]
- (5) This section has effect subject to section 532 (modified tax consequences following disqualifying events).

*Status: Point in time view as at 18/06/2004.*

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### Textual Amendments

**F55** Words in s. 531(4) substituted (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 37\(1\)\(2\)](#); [S.I. 2003/1997, art. 2](#)

## *Tax advantages where disqualifying events*

### **532 Modified tax consequences following disqualifying events**

- (1) This section applies where—
  - (a) a disqualifying event (see section 533) occurs in relation to a qualifying option before the option is exercised, and
  - (b) the option is exercised later than 40 days after the day on which the event occurred.
- (2) If the option is within section 530(1) (option to acquire shares at market value), the section 476 gain is—

### **PEG - ACO**

(see subsection (4)).

- (3) If the option is within section 531(1) (option to acquire shares at less than market value), the section 476 gain is—

### **(CMV + PEG) - (ACO + ACS)**

(see subsection (4)).

- (4) For the purposes of subsections (2) and (3)—

ACO is the amount or value of the consideration given for the grant of the option,  
ACS is the amount, if any, for which the shares are acquired,  
CMV is the chargeable market value (as defined by section 531(3)), and  
PEG is the post-event gain, that is the amount (if any) by which the market value of the shares at the time when the option is exercised exceeds their market value immediately before the disqualifying event.
- (5) In those subsections “the section 476 gain” means the amount [<sup>F56</sup>under section 478 (amount of charge under section 476) is to be regarded as the taxable amount for the purposes of section 476 in respect of the acquisition of the shares pursuant to the option.]
- (6) Nothing in the following provisions—
  - (a) subsections (2) and (3) above, or
  - (b) sections 530 and 531,

applies if the amount that counts as employment income by virtue of section 476 in respect of the exercise of the option would, in the absence of those provisions, be less than the amount that counts as such income as a result of those provisions.

*Status: Point in time view as at 18/06/2004.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003, Part 7 is up to date with all changes known to be in force on or before 27 June 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)*

### Textual Amendments

**F56** Words in s. 532(5) substituted (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 38\(1\)\(2\)](#); [S.I. 2003/1997, art. 2](#)

## 533 Disqualifying events

- (1) The following provisions deal with the events that are (or are to be treated as) disqualifying events in relation to a qualifying option—
  - (a) section 534 (events relating to the relevant company),
  - (b) section 535 (events relating to the employee), and
  - (c) section 536 (other disqualifying events), read with sections 537 to 539 (which contain supplementary provisions).
- (2) In the provisions mentioned in subsection (1) “the employee” means the person holding the qualifying option and “the relevant company” means the company whose shares are the subject of the option (see paragraph 1(3) of Schedule 5).

## 534 Disqualifying events relating to relevant company

- (1) The following events relating to the relevant company are disqualifying events in relation to a qualifying option—
  - (a) when the relevant company becomes a 51% subsidiary of another company;
  - (b) when the relevant company comes under the control of—
    - (i) another company, or
    - (ii) another company and any other person connected with that other company,
 without becoming a 51% subsidiary of that other company;
  - (c) when the relevant company ceases to meet the trading activities requirement (see paragraphs 13 to 23 of Schedule 5).
- (2) But where a replacement option has been granted, an event within subsection (1)(a) or (b) is not a disqualifying event in relation to the old option (see paragraph 41(2) of Schedule 5) if the event occurs at any time during the period—
  - (a) beginning at the same time as the period within which the replacement option had to be granted (see paragraph 42 of Schedule 5), and
  - (b) ending with the release of the rights under the old option.
- (3) A disqualifying event is to be treated as occurring in relation to a qualifying option if the circumstances mentioned in subsection (4) arise.
- (4) The circumstances are that—
  - (a) the relevant company was a qualifying company at the time when the option was granted as a result only of preparations to carry on a qualifying trade; and
  - (b) either—
    - (i) the preparations cease to be carried on, or
    - (ii) the initial period comes to an end,
 without the relevant company (or, if it is a parent company, any member of the group) beginning to carry on that qualifying trade.



*Status: Point in time view as at 18/06/2004.*

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- (5) “The initial period” means the period of two years after the date when the option was granted.
- (6) Paragraph 41(5)(b) of Schedule 5 has the effect that a replacement option is to be treated as granted on the date when the original option was granted.

### **535 Disqualifying events relating to employee**

- (1) The following events relating to the employee are disqualifying events in relation to a qualifying option—
  - (a) when the employee ceases to be an eligible employee in relation to the relevant company as a result of ceasing to meet the requirement in paragraph 25 of Schedule 5 (the employment requirement);
  - (b) when the employee ceases to be such an employee as a result of ceasing to meet the requirement in paragraph 26 of that Schedule (the requirement as to commitment of working time).
- (2) In addition, a disqualifying event is to be treated as occurring in relation to a qualifying option at the end of any tax year if, during that year, the average amount per week of the employee’s reckonable time in relevant employment was less than the statutory threshold.
- (3) An employee’s “reckonable time in relevant employment” means the time which the employee in fact spent, as an employee in relevant employment—
  - (a) on the business of the relevant company, or
  - (b) if that company is a parent company, on the business of the group,together with any time which the employee would, as such an employee, have spent on that business but for any of the reasons set out in paragraph 26(3)(a) to (d) of Schedule 5 (requirement as to commitment of working time).
- (4) The “statutory threshold” means—
  - (a) 25 hours, or
  - (b) if less, 75% of the employee’s working time.
- (5) For the purpose of applying subsection (2) to the tax year in which the option was granted, any part of that year which preceded the date on which it was granted is to be disregarded in calculating the average amount mentioned in that subsection.
- (6) In this section—
  - (a) “relevant employment” means employment—
    - (i) by the relevant company, or
    - (ii) if that company is a parent company, by any member of the group;
  - (b) “working time” has the meaning given by paragraph 27 of Schedule 5 (meaning of “working time”).

### **536 Other disqualifying events**

- (1) The following are also disqualifying events in relation to a qualifying option—
  - (a) any variation of the terms of the option whose effect is either—
    - (i) to increase the market value of the shares that are the subject of the option, or

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- (ii) that the requirements of Schedule 5 would no longer be met in relation to the option;
  - (b) any alteration to the share capital of the relevant company—
    - (i) to which subsection (2) (share values affected by alteration of rights or restrictions) of section 537 applies, and
    - (ii) whose effect is that the requirements of Schedule 5 would no longer be met in relation to the option;
  - (c) any alteration to the share capital of the relevant company to which—
    - (i) subsection (2) (share values affected by alteration of rights or restrictions), and
    - (ii) subsection (3) (alteration designed to increase share values),
 of section 537 apply;
  - (d) a conversion of any of the shares to which the option relates into shares of a different class, except in a case within section 538(2); and
  - (e) the grant to the employee of a relevant CSOP option, if immediately after it is granted the employee holds unexercised employee options in respect of shares with a total value of more than £100,000.
- (2) In subsection (1)(e)—
- “relevant CSOP option”, and
  - “employee option”,
- have the meaning given by section 539 (CSOP and other options relevant for purposes of this section); and sub-paragraphs (6) to (8) of paragraph 5 of Schedule 5 (determination of value of shares) apply for the purposes of subsection (1)(e) as they apply for the purposes of paragraph 5.

### **537 Alterations of share capital for purposes of section 536**

- (1) This section has effect for the purposes of section 536(1)(b) and (c) (other disqualifying events: alterations of share capital of relevant company).
- (2) This subsection applies to an alteration of the share capital of the relevant company if—
  - (a) the alteration affects (or but for the occurrence of some other event would affect) the value of the shares to which the option relates; and
  - (b) it consists of or includes—
    - (i) the creation, variation or removal of a right relating to any shares in the relevant company,
    - (ii) the imposition of a restriction relating to any such shares, or
    - (iii) the variation or removal of a restriction to which any such shares are subject.
- (3) This subsection applies to an alteration of the share capital of the relevant company if the effect of the alteration is to increase the market value of the shares to which the option relates and either—
  - (a) it is not made by the relevant company for commercial reasons, or
  - (b) the main purpose (or one of the main purposes) for making it is to increase the market value of those shares.
- (4) In this section any reference to—

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- (a) a restriction relating to shares or to which shares are subject, or
  - (b) a right relating to shares,
- is a reference to such a restriction imposed or right conferred by any contract or arrangement or in any other way.

### **538 Share conversions excluded for purposes of section 536**

- (1) This section has effect for the purposes of section 536(1)(d) (other disqualifying events: share conversions).
  - (2) A conversion of shares is not a disqualifying event if—
    - (a) it is a conversion of shares of one class only (“the original class”) into shares of one other class only (“the new class”);
    - (b) all the shares of the original class are converted into shares of the new class; and
    - (c) one of the conditions in subsection (3) is met.
  - (3) The conditions are—
    - (a) that immediately before the conversion the majority of the relevant company’s shares of the original class are held otherwise than by or for the benefit of—
      - (i) directors or employees of the relevant company,
      - (ii) an associated company of the relevant company, or
      - (iii) directors or employees of such an associated company;
    - (b) that immediately before the conversion the relevant company is employee-controlled as a result of holdings of shares of the original class.
- [<sup>F57</sup>(4) “associated company” has the same meaning as, by virtue of section 416 of ICTA, it has for the purposes of Part 11 of ICTA,
- “director” has the same meaning as in the benefits code (see section 67) but also includes a person who is to be or has been a director,
- “employee” includes a person who is to be or has been an employee, and
- “employee-controlled” has the same meaning as in Chapters 1 to 4 of this Part (see section 421H(1)).]

#### **Textual Amendments**

**F57** S. 538(4) substituted (1.9.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 39\(1\)\(2\)](#); S.I. 2003/1997, art. 2

### **539 CSOP and other options relevant for purposes of section 536**

- (1) This section has effect for the purposes of section 536(1)(e) (other disqualifying events: grant of CSOP option).
- (2) A “relevant CSOP option” means a CSOP option granted to the employee by reason of the employee’s employment—
  - (a) with the employer company, or
  - (b) if it is a member of a group of companies, with any member of that group.

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- (3) A share option is an “employee option” if it is—
- (a) the qualifying option mentioned in section 536(1), or
  - (b) another qualifying option granted to the employee by reason of the employee’s employment as mentioned in subsection (2)(a) or (b) above, or
  - (c) a relevant CSOP option.
- (4) In this section a “CSOP option” means an option to acquire shares under a scheme approved under Schedule 4 (CSOP schemes).

*Tax advantages: taxable benefits*

#### **540 No charge on acquisition of shares as taxable benefit**

- (1) In its application in relation to a UK resident employee, [<sup>F58</sup>Chapter 3C of this Part] (taxable benefits: notional loans in respect of acquisitions of shares) does not apply in relation to the acquisition of shares by the exercise of a qualifying option.
- (2) An employee is a “UK resident employee” if—
- (a) at the time when the option is granted, or
  - (b) at the time when it is exercised,
- the earnings from the employment are (or would be if there were any) general earnings to which section 15 or 21 applies (earnings for year when employee resident and ordinarily resident in the United Kingdom).

#### **Textual Amendments**

**F58** Words in s. 540(1) substituted (with effect in accordance with Sch. 22 para. 40(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 40\(1\)](#)

*Other income tax consequences*

#### **541 Effects on other income tax charges**

- [<sup>F59</sup>(1) Nothing in the EMI code affects—
- (a) the operation of Chapters 2 to 4 of this Part in relation to shares acquired under a qualifying option, or
  - (b) the operation of Chapter 5 of this Part otherwise than in relation to the acquisition of shares under a qualifying option.
- (2) But in calculating the taxable amount for the purposes of section 426 (post-acquisition charge on restricted securities) in respect of shares acquired under a qualifying option, the amount of relief on the exercise of the option is to be regarded as a deductible amount for the purposes of section 428 (amount of charge).]
- (3) “The amount of relief on the exercise of the option” means the difference between—
- (a) the amount that would have counted as employment income by virtue of section 476 in respect of the exercise of the option apart from the EMI code, and
  - (b) the amount (if any) that in fact counts as such income in accordance with the EMI code.

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### Textual Amendments

- F59** S. 541(1)(2) substituted (1.9.2003 with effect in accordance with Sch. 22 para. 41(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), **Sch. 22 para. 41(1)**; S.I. 2003/1997, art. 2

## CHAPTER 10

### PRIORITY SHARE ALLOCATIONS

#### *Exemption where offer made to both public and employees*

#### **542 Exemption: offer made to public and employees**

- (1) This section applies if—
  - (a) there is a genuine offer to the public of shares in a company at a fixed price or by tender,
  - (b) a director or employee of the company, or of another company or person, is entitled by reason of the office or employment to an allocation of the shares in priority to members of the public, and
  - (c) conditions A to C are met.
- (2) No liability to income tax in respect of earnings arises by virtue of any benefit derived by the director or employee from the entitlement.
- (3) Condition A is that the aggregate number of shares subject to the offer that may be allocated as mentioned in subsection (1)(b) (“priority shares”) does not exceed—
  - (a) if the offer is part of arrangements which include one or more other offers to the public of shares of the same class, either of the limits in subsection (4), or
  - (b) in any other case, 10% of the shares subject to the offer (including the priority shares).
- (4) The limits referred to in subsection (3)(a) are—
  - (a) 40% of the shares subject to the offer (including the priority shares), and
  - (b) 10% of all the shares of the class in question that are subject to any of the offers forming part of the arrangements (including the priority shares).
- (5) Condition B is that all the persons entitled to an allocation of priority shares are entitled to it on similar terms (see section 546).
- (6) Condition C is that those persons are not restricted wholly or mainly to directors or to those whose remuneration exceeds a particular level.
- (7) This section has effect subject to section 543 (discount not covered by exemption in this section).

#### **543 Discount not covered by exemption in section 542**

- (1) This section applies if the total of—
  - (a) the price payable by the director or employee for the shares of the company allocated to the director or employee under the offer, and

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- (b) the amount or value of any registrant discount made to the director or employee in respect of the shares,  
is less than the fixed price or the lowest price successfully tendered.
- (2) Section 542(2) (exemption: offer made to public and employees) does not apply to the benefit (if any) represented by the difference.

*Exemption where different offers made to public and employees*

#### **544 Exemption: different offers made to public and employees**

- (1) This section applies if—
  - (a) there is a genuine offer to the public of a combination of shares in two or more companies at a fixed price or by tender (“the public offer”),
  - (b) there is at the same time an offer (“the employee offer”) of shares, or of a combination of shares, in one or more, but not all, of those companies—
    - (i) to directors or employees of any of those companies, or of any other company or person, or
    - (ii) to those directors or employees and to other persons,
  - (c) any of those directors or employees is entitled by reason of the office or employment to an allocation of shares under the employee offer in priority to any allocation to members of the public under the public offer, and
  - (d) conditions A to C are met.
- (2) No liability to income tax in respect of earnings arises by virtue of any benefit derived by the director or employee from the entitlement.
- (3) Condition A is that for each company whose shares are subject to the employee offer, the aggregate number of shares subject to that offer that may be allocated as mentioned in subsection (1)(c) (“priority shares”) does not exceed—
  - (a) if the public offer and the employee offer are part of arrangements which include one or more other offers to the public of shares in the company of the same class, either of the limits in subsection (4), or
  - (b) in any other case, 10% of the shares in the company that are subject to the public offer or the employee offer (including the priority shares).
- (4) The limits referred to in subsection (3)(a) are—
  - (a) 40% of the shares in the company that are subject to the public offer or the employee offer (including the priority shares), and
  - (b) 10% of all the shares in the company of the class in question that are subject to any of the offers forming part of the arrangements (including the priority shares).
- (5) Condition B is that all the persons entitled to an allocation of priority shares are entitled to it on similar terms (see section 546).
- (6) Condition C is that those persons are not restricted wholly or mainly to directors or to those whose remuneration exceeds a particular level.
- (7) This section has effect subject to section 545 (discount not covered by exemption in this section).

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## **545 Discount not covered by exemption in section 544**

- (1) This section applies if the total of—
- (a) the price payable by the director or employee for the shares of a company allocated to the director or employee under the employee offer, and
  - (b) the amount or value of any registrant discount made to the director or employee in respect of the shares,
- is not the same as, or as near as reasonably practicable to, the appropriate notional price for the shares of the company.
- (2) Section 544(2) (exemption: different offers made to public and employees) does not apply to the benefit (if any) represented by the amount by which the appropriate notional price exceeds the total referred to in subsection (1).
- (3) The “appropriate notional price” for the shares of a company is—
- (a) if subsection (4) applies, the amount given by the formula in subsection (6), and
  - (b) in any other case, the notional price.
- (4) This subsection applies if shares of the company are subject to the public offer and there is a difference between CP and AFP—
- (a) CP being the price for the combination of shares subject to the public offer determined by aggregating the notional prices for each one of the shares comprised in the combination, and
  - (b) AFP being the actual fixed price or (as the case may be) the lowest successfully tendered price for that combination of shares.
- (5) The “notional price” for the shares of a company is the price that might reasonably have been expected to be the fixed price for the shares of the company under a separate offer of those shares if—
- (a) the shares of the company, and of each of the other companies had, instead of being subject to the public offer and the employee offer, been subject to separate offers to the public in respect of each company at fixed prices, and
  - (b) those separate offers had been made at the time at which the public offer was in fact made.
- (6) The formula referred to in subsection (3)(a) is—

$$NP \times \frac{AFP}{CP}$$

where—

NP is the notional price for the shares of the company, and

AFP and CP have the same meanings as in subsection (4).

### *Supplementary provisions*

## **546 Meaning of being entitled “on similar terms”**

- (1) This section applies for the purposes of sections 542(5) and 544(5) (condition that entitlements to allocation of priority shares must be on similar terms).

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- (2) The fact that different provision is made for persons according to—
- (a) the levels of their remuneration,
  - (b) the length of their service, or
  - (c) similar factors,
- does not mean that they are not entitled to an allocation on similar terms.
- (3) The fact that the allocations of shares in a company to which non-company employees are entitled are smaller than those to which company employees are entitled does not mean that they are not entitled on similar terms, if conditions A and B are met.
- (4) Condition A is that each non-company employee is also entitled by reason of the office or employment and in priority to members of the public, to an allocation of shares in another company or companies which are offered to the public at a fixed price or by tender at the same time as the shares in the company.
- (5) Condition B is that in the case of each non-company employee the aggregate value of all the shares included in the allocations to which the non-company employee is entitled is the same, or as nearly the same as is reasonably practicable, as that of the shares in the company included in the entitlement of a comparable company employee.
- (6) For the purposes of subsection (5), the value of shares is to be measured by reference to the fixed price or the lowest price successfully tendered.
- (7) In this section—
- “company employee”, in relation to a company, means a director or employee of the company, and
  - “non-company employee”, in relation to a company, means a director or employee of another company or person.

#### **547 Meaning and amount or value of “registrant discount”**

- (1) For the purposes of this Chapter there is a “registrant discount” in respect of the shares of a company if conditions A to C are met.
- (2) Condition A is that members of the public who comply with such requirements as may be imposed in connection with the offer or, if section 544 applies, the public offer are, or may become, entitled to a discount in respect of the whole or part of the shares of the company allocated to them.
- (3) Condition B is that at least 40% of the shares of the company allocated to members of the public are allocated to individuals who are or become entitled to—
- (a) the discount, or
  - (b) some other benefit of similar value for which they may elect as an alternative to the discount.
- (4) Directors and employees who are entitled by reason of their office or employment to an allocation of the shares in priority to members of the public are not to be treated as members of the public for the purposes of subsection (3).
- (5) Condition C is that subscribing employees are, or may become, entitled to the same discount in respect of the shares of the company as any other members of the public to whom shares of the company are allocated under the offer.
- (6) In subsection (5) a “subscribing employee” means a director or employee who—



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- (a) subscribes for shares—
    - (i) if section 542 (offer made to public and employees) applies, under the offer as a member of the public, or
    - (ii) if section 544 (different offers made to public and employees) applies, under the public offer as a member of the public or under the employee offer as a director or employee, and
  - (b) complies (or, in the case of a requirement to register, is taken under the terms of the offer to comply) with the requirements mentioned in subsection (2).
- (7) For the purposes of this Chapter, the “amount or value” of any registrant discount made to a director or employee means—
- (a) the amount of any such discount made to the director or employee as is mentioned in subsection (5), or
  - (b) the value of any such other benefit as is mentioned in subsection (3)(b) which is conferred on the director or employee as an alternative to the discount.

## **548 Minor definitions**

- (1) In this Chapter—
- “director” means—
- (a) in relation to a company whose affairs are managed by a board of directors or similar body, a member of that body,
  - (b) in relation to a company whose affairs are managed by a single director or similar person, that director or person, and
  - (c) in relation to a company whose affairs are managed by the members themselves, a member of the company, and
- includes any person in accordance with whose directions or instructions the directors of the company (as defined in paragraphs (a) to (c)) are accustomed to act and a person who is to be, or has ceased to be, a director (as so defined);
- “employee” includes a person who is to be or has been an employee;
- “shares” includes stock;
- “the employee offer” and “the public offer” have the meanings given by section 544(1).
- (2) For the purposes of subsection (1) a person is not to be regarded as a person in accordance with whose directions or instructions the directors of the company are accustomed to act merely because the directors act on advice given by that person in a professional capacity.
- (3) References in this Chapter—
- (a) to the employment, in relation to an employee, are to the employment of that employee, and
  - (b) to the office, in relation to a director, are to the office of that director.

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## CHAPTER 11

### SUPPLEMENTARY PROVISIONS ABOUT EMPLOYEE BENEFIT TRUSTS

#### *Introduction*

#### **549 Application of this Chapter**

- (1) This Chapter applies for the purposes of any listed provision in circumstances where—
- (a) an individual (“B”) is interested as a beneficiary of an employee benefit trust in shares or obligations of a particular company (“the company”), and
  - (b) the question arises under that provision whether the trustees of the trust are, as a result of B’s being so interested, to be regarded as associates of B’s for the relevant purposes.

The relevant purposes are those of the operation, in relation to the company, of the “no material interest” requirement contained in the Schedule to this Act in which the listed provision appears.

- (2) In this Chapter “listed provision” means any of the following provisions (under which trustees of an employee benefit trust are not to be regarded as associates if specified limits relating to share ownership are not exceeded)—
- (a) paragraph 23(2) of Schedule 2 (approved SIPs),
  - (b) paragraph 15(2) of Schedule 3 (approved SAYE option schemes),
  - (c) paragraph 13(2) of Schedule 4 (approved CSOP schemes), or
  - (d) paragraph 32(2) of Schedule 5 (enterprise management incentives).

- (3) The general effect of this Chapter is that if the provisions of—
- (a) sections 552 and 553 (attribution of interest in company to beneficiary or associate), or
  - (b) section 554 (attribution of further interest),
- apply in relation to B or an associate of B’s, B or the associate is to be treated for the purposes of the listed provision as having been the beneficial owner of a particular percentage of the company’s ordinary share capital on a particular date.

- (4) In this Chapter, in relation to an individual, “associate”—
- (a) has the same meaning as in section 417(3) and (4) of ICTA (expressions relating to close companies), but
  - (b) does not include the trustees of an employee benefit trust as a result only of the individual’s having (as mentioned in subsection (1)(a)) an interest in shares or obligations of the company which are subject to the trust.

- (5) In this Chapter “employee” means the holder of a taxable employment under Part 2 (as defined in section 66(3)), and accordingly includes an office-holder whose office is within the scope of that definition as a result of section 5(1).

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### *Employee benefit trusts*

#### **550 Meaning of “employee benefit trust”**

- (1) In this Chapter “employee benefit trust”, in relation to a company, means a trust where conditions A and B are met.
- (2) Condition A is that all or most of the employees of the company are eligible to benefit under the trust.
- (3) Condition B is that after 13th March 1989 either—
  - (a) there has been no disposal of any of the property subject to the trust, or
  - (b) any disposal of any of that property was a disposal within subsection (4).
- (4) The disposals within this subsection are—
  - (a) disposals in the ordinary management of the trust, or
  - (b) qualifying disposals (within the meaning given by section 551).
- (5) In this section and section 551 “disposal” means disposal by sale, loan or otherwise.

#### **551 “Qualifying disposals” for purposes of section 550**

- (1) For the purposes of section 550 (meaning of “employee benefit trust”) a “qualifying disposal” is a disposal of property consisting of—
  - (a) any of the ordinary share capital of the company, or
  - (b) money paid outright,where any of conditions 1, 2 and 3 is met.
- (2) Condition 1 is that the property has been applied for the benefit of—
  - (a) individual employees or former employees of the company,
  - (b) spouses, former spouses, widows or widowers of employees or former employees of the company,
  - (c) dependants of persons within paragraph (a), or
  - (d) relatives, or spouses of relatives, of persons within paragraph (a) or (b).
- (3) In subsection (2) each reference to the company includes a reference to a company controlled by the company.
- (4) Condition 2 is that the property has been applied for charitable purposes.
- (5) Condition 3 is that the property has been transferred to—
  - (a) the trustees of another employee benefit trust,
  - (b) the trustees of a qualifying employee share ownership trust (within the meaning of Schedule 5 to FA 1989), or
  - (c) the trustees of a profit sharing scheme approved under Schedule 9 to ICTA (approved share option schemes and profit sharing schemes).
- (6) In this section “relative” means—
  - (a) parent, child or remoter relation in the direct line, or
  - (b) brother, sister, uncle, aunt, nephew or niece.

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### *Attribution of interests in company*

#### **552 Attribution of interest in company to beneficiary or associate**

- (1) This section applies if—
- (a) after 13th March 1989 B, or an associate of B's, has received a payment (“the relevant payment”) from the trustees of the employee benefit trust, and
  - (b) at any time during the period of 3 years ending with the day on which the relevant payment was received (“the payment date”), the property subject to the trust consisted of or included any part of the ordinary share capital of the company.
- (2) In such a case B or the associate is to be treated for the purposes of the listed provision as having been the beneficial owner of the appropriate percentage of the ordinary share capital of the company on the payment date.
- (3) This is in addition to any percentage of that share capital of which B or the associate was actually the beneficial owner on that date.
- (4) Section 553 explains what is meant by “the appropriate percentage”.

#### **553 Meaning of “appropriate percentage” for purposes of section 552**

- (1) For the purposes of section 552 “the appropriate percentage” is—

$$\frac{P \times 100}{D}$$

where P and D have the meaning given by the following provisions.

- (2) Unless subsection (3) applies, P is the aggregate of the relevant payment and any other payments received by B or associates of B's from the trustees of the trust during the period of 12 months ending with the payment date.
- (3) If—
- (a) any distributions were made to the trustees of the trust by the company in respect of its ordinary share capital during the period of 3 years ending with the payment date, and
  - (b) the aggregate of those distributions is less than the aggregate mentioned in subsection (2),

P is the aggregate of those distributions.

- (4) Unless subsection (5) applies, D is the amount determined as follows—

##### *Step 1*

Calculate the aggregate of—

- (a) any distributions made by the company in respect of its ordinary share capital during the period of 12 months ending with the payment date,
- (b) any distributions so made during the period of 12 months immediately preceding that mentioned in paragraph (a), and
- (c) any distributions so made during the period of 12 months immediately preceding that mentioned in paragraph (b).

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*Status: Point in time view as at 18/06/2004.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003, Part 7 is up to date with all changes known to be in force on or before 27 June 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)*

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### *Step 2*

Divide the aggregate so calculated by the number of the periods mentioned in paragraphs (a) to (c) in which distributions were so made.

- (5) If no distributions were so made during any of those periods, D is 1.
- (6) In this section “the payment date” and “the relevant payment” have the meaning indicated in section 552(1).

## **554 Attribution of further interest in company**

- (1) This section applies if—
  - (a) B or an associate of B’s is (apart from this section) to be treated by virtue of section 552(2) as having been the beneficial owner of a percentage of the ordinary share capital of the company as a result of receiving the relevant payment from the trustees of an employment benefit trust, and
  - (b) B or an associate of B’s has, during the period of 12 months ending with the payment date, received one or more payments from the trustees of any other employee benefit trust or trusts connected with the company.
- (2) In such a case section 552 applies to B or (as the case may be) the associate mentioned in subsection (1)(a) as if B or the associate had received—
  - (a) any payment from the trustees of a trust as mentioned in subsection (1)(b), or
  - (b) where more than one payment has been received from the trustees of a trust, the last of the payments,on the payment date.
- (3) B or the associate is accordingly to be treated for the purposes of the listed provision as having been the beneficial owner on the payment date of both—
  - (a) the percentage of the ordinary share capital of the company mentioned in subsection (1)(a), and
  - (b) the appropriate percentage of that share capital as determined in accordance with subsection (2).
- (4) This is in addition to any percentage of that share capital of which B or the associate was actually the beneficial owner on that date.
- (5) For the purposes of this section a trust is “connected with” the company if, at any time during the period of 3 years ending with the payment date, the property subject to the trust consisted of or included any part of the ordinary share capital of the company.
- (6) In this section “the payment date” and “the relevant payment” have the meaning indicated in section 552(1).

**Status:**

Point in time view as at 18/06/2004.

**Changes to legislation:**

Income Tax (Earnings and Pensions) Act 2003, Part 7 is up to date with all changes known to be in force on or before 27 June 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.