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Income Tax (Earnings and Pensions) Act 2003

2003 CHAPTER 1

PART 7

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

[^{F2}CHAPTER 3

CONVERTIBLE SECURITIES

Textual Amendments

- F2** 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—

- (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,

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- (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).
- (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

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- 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)

- (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.

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- (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,
 - (b) all the company's shares of the class are convertible securities,
 - (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.
- (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,

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- (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 held by or for the benefit of any of the following—
- (a) employees of the company,
 - (b) persons who are related to an employee of the company,
 - (c) associated companies of the company,
 - (d) employees of any associated company of the company, or
 - (e) persons who are related to an employee of any such associated company.
- (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.

Supplementary

444 Definitions

- (1) In this Chapter—
- “interest”, in relation to securities,
 - “securities”, and
 - “shares”,
- 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” (except in section 443), and
 - “employment-related securities”,
- have the meaning indicated in section 421B(8).

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- (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.]

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