



# Income Tax (Earnings and Pensions) Act 2003

## 2003 CHAPTER 1

### PART 7

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

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

SECURITIES ACQUIRED FOR LESS THAN MARKET VALUE

#### Textual Amendments

- F2** 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.

*Status: Point in time view as at 21/07/2008.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003, Chapter 3C is up to date with all changes known to be in force on or before 03 July 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)*

- (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,
- [ subsection (1A) is satisfied,] and
- <sup>F3</sup>(ba)
- (c) subsection (3) or (4) is satisfied.

[<sup>F4</sup>(1A) This subsection is satisfied unless something which affects the employment-related securities has been done (at or before the time of the acquisition) as part of a scheme or arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax or national insurance contributions.]

- (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.
- (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>F5</sup>employment-related securities.]

<sup>F6</sup>(5) . . . . .

#### **Textual Amendments**

- F3** S. 446R(1)(ba) inserted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), **ss. 86(2)(c)(3)(8)**, 86(1)
- F4** S. 446R(1A) substituted (with effect in accordance with Sch. 2 para. 13(2) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **Sch. 2 para. 13**
- F5** 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)
- F6** S. 446R(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)**

#### **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.

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- (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

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 [<sup>F7</sup>(other than an amount of exempt income)],
  - (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.

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- (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.

#### Textual Amendments

**F7** Words in s. 446T(3)(b) inserted (with effect in accordance with s. 49(12) of the amending Act) by Finance Act 2008 (c. 9), s. 49(5)

### 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<sup>F8</sup> or
  - (c) something which affects the employment-related securities is done as part of a scheme or arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax or national insurance contributions.]
- (2) 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—
- (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.

#### Textual Amendments

**F8** S. 446U(1)(c) and word inserted (with effect in accordance with Sch. 2 para. 14(2) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), Sch. 2 para. 14

### <sup>I</sup><sub>F9</sub> 446UA Pre-acquisition avoidance cases

- (1) Sections 446S to 446U do not apply if the main purpose (or one of the main purposes) of the arrangements under which the right or opportunity to acquire the employment-related securities is made available is the avoidance of tax or national insurance contributions.

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- (2) But instead an amount equal to what would (apart from this section) be the amount of the notional loan initially outstanding by virtue of sections 446S and 446T counts as employment income of the employee for the tax year in which the acquisition takes place.]

#### Textual Amendments

- F9** S. 446UA inserted (with effect in accordance with Sch. 2 para. 15(2) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 2 para. 15](#)

#### 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:**

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**Changes to legislation:**

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