



# Income Tax (Earnings and Pensions) Act 2003

## 2003 CHAPTER 1

### PART 7 **U.K.**

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

### [<sup>F2</sup>CHAPTER 5 **U.K.**

#### SECURITIES OPTIONS

#### Textual Amendments

- F2** 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 **U.K.****

- (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 purposes of subsection (1) as available by reason of an employment of that person unless—

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- (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** U.K.

- (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),
- are connected or, although not connected, are 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.

#### **473 Introduction to taxation of securities options** U.K.

- (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.

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- (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** **U.K.**

- (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** **U.K.**

- (1) No liability to income tax arises in respect of the acquisition of an employment-related securities option.
- (2) Subsection (1) is subject to section 526 (approved CSOP schemes: charge where share option granted at a discount).

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

#### **476 Charge on occurrence of chargeable event U.K.**

- (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 U.K.**

- (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 in money or money’s worth in connection with the employment-related securities option (other than securities acquired pursuant to the employment-related securities option or consideration for its assignment or release).
- (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.

#### **478 Amount of charge** **U.K.**

- (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** **U.K.**

- (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
- (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.

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- (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** U.K.

- (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
  - (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—

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- (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** **U.K.**

- (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
  - (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—



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- (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 U.K.**

- (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.

#### *Supplementary provisions*

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

- (1) This section applies if—
  - (a) the employment-related securities option (the “old option”) is assigned or released, and



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- (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 **U.K.**

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

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- (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>F2</sup>**485** Application of this Chapter where share option exchanged for another **U.K.**

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<sup>F2</sup>**486** Duty to notify matters relating to share options **U.K.**

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<sup>F2</sup>**487** Minor definitions **U.K.**

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**Status:**

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**Changes to legislation:**

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