



Finance Act 2004

2004 CHAPTER 12

PART 3

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 4

PERSONAL TAXATION

Employment-related securities and options

VALID FROM 01/09/2004

85 Relief where national insurance contributions met by employee

- (1) Schedule 16 to this Act provides—
 - (a) for income tax relief in certain cases where national insurance contributions are met by an employee, and
 - (b) for consequential amendments.
- (2) This section (and that Schedule) come into force in accordance with provision made by the Treasury by order made by statutory instrument.

86 Shares in employee-controlled companies and unconnected companies

- (1) Each of the provisions of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (employment income: securities) specified in subsection (2) (exception from charges for certain company shares) is amended in accordance with subsections (3) to (5).
- (2) The provisions are—

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- (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) In subsection (1) of each of those sections, after paragraph (b) (but before the word “and” where that word features at the end) insert—
- “(ba) subsection (1A) is satisfied.”.
- (4) After subsection (1) of each of those sections insert—
- “(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.”.
- (5) In subsection (4) of sections 429, 443 and 446R, and in subsection (3) of section 449, for the words after “are not” substitute “ employment-related securities. ”; and accordingly omit sections 429(5), 443(5), 446R(5) and 449(4).
- (6) In Chapter 3A of that Part of that Act (securities with artificially depressed market value), after section 446I insert—

“446IA Disapplication of exceptions from charges

- (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.
 - (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.”.
- (7) In Chapter 3B of that Part of that Act (securities with artificially enhanced market value), after section 446N insert—

“446NA Disapplication of exceptions from charges

- (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.

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- (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.”.
- (8) This section applies on and after 7th May 2004.

87 Restricted securities with artificially depressed value

- (1) Section 446E of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (employee securities with artificially depressed market value: charge on restricted securities) is amended as follows.
- (2) In subsection (1), after “on restricted securities),” insert—
- “(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.”.
- (3) For subsections (3) to (6) substitute—
- “(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—

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- (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.
- (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).”
- (4) This section applies on and after 7th May 2004.
- (5) But if the employment-related securities were acquired before that date, section 446E of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) does not apply by virtue of the amendment made by subsection (2) of this section unless their market value would be artificially low immediately before the disposal or cancellation if the date on which the relevant period began were the later of—
- (a) that on which it did begin, and
 - (b) 7th May 2004.

88 Shares under approved plans and schemes

- (1) The Income Tax (Earnings and Pensions) Act 2003 is amended as follows.
- (2) Omit section 421G (exclusion from Chapters 2 to 4 of Part 7 of shares awarded or acquired under approved plan or scheme).
- (3) In Chapter 2 of Part 7 (restricted securities), after section 431 insert—

“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

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- 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.”.
- (4) In section 489 (operation of tax advantages in connection with approved share incentive plans), after subsection (3) insert—
- “(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.”.
- (5) In sections 505 and 506 (charge on shares ceasing to be subject to approved share incentive plan), after subsection (4) insert—
- “(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.”.
- (6) In section 519(1) (approved SAYE option schemes: no charge in respect of exercise of option) insert at the end “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.”.
- (7) In section 524(1) (approved CSOP schemes: no charge in respect of exercise of option) insert at the end “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.”.
- (8) Section 701 (PAYE: meaning of “asset”) is amended as follows.
- (9) In subsection (2)(c)—
- (a) in sub-paragraph (ia), for the words after “employee” substitute “ under a scheme approved under Schedule 4 (approved CSOP schemes) in circumstances in which Condition A or B as set out in section 524(2) or (2A) is met; ”,
 - (b) omit sub-paragraph (ii), and
 - (c) in sub-paragraph (iii), after “1996” insert “ where 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 right was obtained or is exercised ”.
- (10) After subsection (3) insert—
- “(3A) Paragraph (c) of subsection (2) does not apply to shares after their acquisition as mentioned in that paragraph.”.

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- (11) This section has effect on and after 18th June 2004 and (so far as it does not relate to the award or acquisition of shares) applies in relation to shares awarded or acquired before that date as well as in relation to those awarded or acquired on or after that date.
- (12) Where section 431A(1) of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (as inserted by subsection (3)) has effect (by virtue of subsection (11)) in relation to shares acquired before 18th June 2004, it applies in relation to them so as to treat an election under section 431(1) of that Act as made in relation to them on that date.
- (13) For the purposes of the application of Chapter 3B of Part 7 of that Act (securities with artificially enhanced market value) by reason of subsections (2) and (11) in relation to shares acquired before 18th June 2004, section 446O of that Act (meaning of “relevant period”) has effect as if they were acquired on that date.

89 Shares acquired on public offer

- (1) Section 421F of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (exclusion from Chapters 2 to 4 of Part 7 of shares acquired under terms of offer to the public) is amended as follows.
 - (2) In subsection (1), for “Chapters 2 to 4” substitute “ Chapters 2, 3 and 3C ”.
 - (3) After that subsection insert—
 - “(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.”.
 - (4) This section has effect on and after 18th June 2004 and applies in relation to shares acquired before that date as well as in relation to those acquired on or after that date.
 - (5) For the purposes of the application of Chapter 3B of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (securities with artificially enhanced market value) by reason of subsections (2) and (4) in relation to shares acquired before that date, section 446O of that Act (meaning of “relevant period”) has effect as if they were acquired on that date.

90 Associated persons etc.

- (1) Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (employment income: securities) is amended as follows.
 - (2) In section 421C(2) (meaning of “relevant linked person” for purposes of Chapters 1 to 4), for “are connected or, although not connected, are” substitute “ are or have been connected or (without being or having been connected) are or have been ”.
 - (3) In section 472(2) (meaning of “relevant linked person” for purposes of Chapter 5), for “are connected or, although not connected, are” substitute “ are or have been connected or (without being or having been connected) are or have been ”.

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- (4) In section 477(3)(c) (chargeable events in relation to employment-related securities options), for the words after “benefit” substitute “ in connection with the employment-related securities option (other than one within paragraph (a) or (b)). ”
- (5) This section has effect on and after 18th June 2004 and applies in relation to securities, interests and options that were employment-related securities or employment-related securities options on that date (as well as those acquired on or after that date).

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