

SCHEDULE 3

PAYMENTS TO BE DISREGARDED IN THE CALCULATION OF EARNINGS FOR THE PURPOSES OF EARNINGS-RELATED CONTRIBUTIONS

PART IX

SHARE INCENTIVES

Certain payments by way of shares, interests in shares and gains arising from them disregarded

1.—(1) Payments by way of—

- (a) shares;
- (b) conditional interests in shares; and
- (c) other rights in or over shares;

respectively mentioned in this Part are disregarded in the calculation of an employed earner's earnings.

(2) For the purposes of paragraphs 13, 15 and 16—

- (a) “body corporate” includes—
 - (i) a body corporate constituted under the law of a country or territory outside the United Kingdom, and
 - (ii) an unincorporated association wherever constituted;
- (b) “total discount” means the difference between the total value of the exercise price of the shares that are subject to the right in question and the total market value of that right;
- (c) “total market value” means the price which the shares that are subject to the right in question might reasonably be able to fetch in the open market; and
- (d) the total market value of the subsequent right is similar to the total market value of the first right if it is not substantially greater than the first right.

Shares in secondary contributor or associated body

2.—(1) A payment by way of shares where such shares—

- (a) are not readily convertible assets; and
- (b) form part of the ordinary share capital of—
 - (i) the secondary contributor,
 - (ii) a company which has control of the secondary contributor, or
 - (iii) a company which either is, or has control of, a body corporate which is a member of a consortium owning either that secondary contributor or a body corporate having control of that secondary contributor.

(2) In this paragraph—

- (a) “body corporate” includes—
 - (i) a body corporate constituted under the law of a country or territory outside the United Kingdom, and
 - (ii) an unincorporated association, wherever constituted;

Status: Point in time view as at 10/04/2003.

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- (b) a body corporate (“A”) is a member of a consortium owning another body corporate (“B”) if—
 - (i) A is one of a number of such bodies which between them beneficially own not less than³/₄ of B’s ordinary share capital; and
 - (ii) each of the bodies corporate owns not less than 1/20 of B’s ordinary share capital;
 - (c) “company” means a body corporate having a share capital;
 - (d) “control” in relation to a body corporate means the power of a person to secure—
 - (i) by means of the holding of the shares or the possession of voting power in, or in relation to, that or any other body corporate,
 - (ii) by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate,that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person;
 - (e) “ordinary share capital” in relation to a company means all the company’s issued share capital (however described), other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profit of the company.
- (3) In this paragraph and paragraph 3, “shares” includes stock.

Rights to acquire shares

3. A payment by way of a right to acquire shares where neither that right nor those shares are readily convertible assets.

[^{F1}“Short” share options granted on or after 6th April 1999

3A. A payment by way of the grant of a right to acquire shares obtained on, or after, 6th April 1999 which is not capable of being exercised more than ten years after it is obtained.]

Textual Amendments

F1 Sch. 3 Pt. 09 para. 3A inserted (26.7.2001) by [The Social Security \(Contributions\) \(Amendment No. 5\) Regulations 2001 \(S.I. 2001/2412\)](#), regs. 1, 5(3)

Enterprise management incentives

4. A payment by way of the grant of a qualifying option within the meaning of Schedule 14 to the Finance Act 2000 ^{F2} which is capable of being exercised more than 10 years after the grant.

Textual Amendments

F2 2000 c. 17.

Priority share allocations

5. A payment by way of any benefit which by virtue of section 68(1) of the Finance Act 1988 (priority share allocations for directors or employees) ^{F3} is not treated as an emolument of the employment chargeable to tax under Schedule E.

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Textual Amendments

F3 1988 c. 39. Section 68(1) was amended by section 66(1) and (2) of the [Finance Act 1989 \(c. 26\)](#).

Partnership share agreements

6. A payment that is deducted from the earnings of the employment under a partnership share agreement.

Here “partnership share agreement” has the meaning given in paragraph 34 of Schedule 8 to the Finance Act 2000.

Shares under employee share ownership plan

7. A payment by way of shares under an award of shares under an employee share ownership plan.

Here “employee share ownership plan” has the meaning given in paragraph 1(1) of Schedule 8 to the Finance Act 2000.

Shares under approved profit sharing schemes

8. A payment by way of shares appropriated under a profit sharing scheme to which section 186 of the Taxes Act ^{F4} applies.

Textual Amendments

F4 Section 186 was amended by section 89(a) of the [Finance Act 1988 \(c. 39\)](#) and section 118(1) of, and paragraph 11 of Schedule 20 to, the [Finance Act 1996 \(c. 8\)](#).

Conditional interest in shares

9. A payment by way of the conferment of a conditional interest in shares in respect of which, by virtue of section 140A(3) of the Taxes Act (conditional acquisition of shares) ^{F5}, no tax is chargeable under Schedule E other than by virtue only of section 135 or section 162 of that Act ^{F6}.

Textual Amendments

F5 Section 140A was inserted by section 50(1) of the Finance Act 1998, and amended by sections 42 and 139 of, and Part III(8) of Schedule 20 to, the [Finance Act 1999 \(c. 16\)](#).

F6 Section 135 was amended by section 49(1) of the Finance Act 1998. Section 162 was amended by paragraph 3 of Schedule 13 to the Finance Act 1988, section 53(2) of the Finance Act 1989 and paragraph 14(11) of Schedule 10 to the [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#).

Conditional interest in shares: gains from exercise etc. of share options

10. A payment by way of a conditional interest in shares where, at the time of payment—

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- (a) the earner is treated under section 203FB(4) of the Taxes Act (PAYE: gains from share options etc) ^{F7} as having been provided with a further interest;
- (b) that further interest would not for the purpose of section 140A of that Act, be treated as only conditional; and
- (c) the conditional interest together with the further interest are not readily convertible assets.

Textual Amendments

F7 Section 203FB was inserted by section 67 of the Finance Act 1998.

Convertible shares

11. A payment by way of convertible shares in respect of which tax is not chargeable under section 140D of the Taxes Act ^{F8} by virtue of either subsection (8) or (10) of that section.

Textual Amendments

F8 Section 140D was inserted by section 51(1) of the Finance Act 1998.

Convertible shares: gains from the exercise etc. of share options

- 12.** A payment by way of a beneficial interest in convertible shares where—
- (a) the earner is treated under section 203FB of the Taxes Act as if the original provision of those shares included the shares into which they are converted; and
 - (b) neither those shares, nor the shares into which they are converted are readily convertible assets.

Share option gains by directors and employees

13. A payment by way of a gain realised by the exercise of a right to acquire shares in a body corporate where—

- (a) that gain is chargeable to tax under Schedule E under section 135 of the Taxes Act; but
- (b) neither that right, nor those shares, are readily convertible assets.

Shares acquired under options granted before 9th April 1998

14. A payment by way of the acquisition of an interest in shares pursuant to a right to acquire such shares granted before 9th April 1998 where the acquisition of that interest would be treated as earnings under regulation 22(3).

Assignment or release of option

15.—(1) A payment by way of a gain realised by the assignment or release of a right (“the first right”) to acquire shares in a body corporate (“the relevant body corporate”) chargeable to tax under Schedule E by virtue of section 135 of the Taxes Act if—

- (a) sub-paragraph (2) is satisfied; and
- (b) sub-paragraph (3) does not apply.

(2) This sub-paragraph is satisfied if a subsequent right forms all, or part, of the consideration given for the assignment or release of the first right.

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- (3) This paragraph applies if—
- (a) the first right was acquired before 6th April 1999; and
 - (b) the total discount on the total market value of the subsequent right is substantially greater than the total discount on the total market value of the first right at the time of its assignment or release.
- (4) In this paragraph “subsequent right” means a right—
- (a) to acquire shares in the relevant body corporate or any other body corporate; and
 - (b) which is not treated as consideration for the assignment or release of the first right by virtue of section 136(1) of the Taxes Act.

Exercise, assignment or release of options acquired before 6th April 1999

16.—(1) A payment by way of a gain realised by the exercise, assignment or release of a right obtained before 6th April 1999 (“the relevant right”) to acquire shares in a body corporate (“the relevant body corporate”) where that gain is [^{F9}chargeable to tax as employment income by virtue of section 476 or section 477 of the Income Tax (Earnings and Pensions) Act 2003.

A payment is not disregarded by virtue of this paragraph if—

- (a) each of the conditions in sub-paragraphs (2) to (5) is met; or
- (b) paragraph 17 applies to it.]

(2) The condition in this sub-paragraph is that the relevant right forms all or part of the consideration given for the assignment or release of a right to acquire shares in a body corporate (“the first right”).

(3) The condition in this sub-paragraph is that the relevant right is a right to acquire shares in the relevant body corporate or any other body corporate.

(4) The condition in this sub-paragraph is that the relevant right is not treated as consideration for the assignment or release of the first right by virtue of [^{F10}section 485 of the Income Tax (Earnings and Pensions) Act 2003].

(5) The condition in this sub-paragraph is that, at the time of its acquisition, the total market value of the relevant right was not similar to the total market value of the first right immediately before its exercise, assignment or release.

Textual Amendments

F9 Words in Sch. 3 para. 16(1) substituted (10.4.2003) by [The Social Security \(Contributions\) \(Amendment No. 3\) Regulations 2003 \(S.I. 2003/1059\)](#), regs. 1(1), **4(2)(a)**

F10 Words in Sch. 3 para. 16(4) substituted (10.4.2003) by [The Social Security \(Contributions\) \(Amendment No. 3\) Regulations 2003 \(S.I. 2003/1059\)](#), regs. 1(1), **4(2)(b)**

[^{F11}Payments resulting from exercise, assignment or release of options which are not disregarded by virtue of paragraph 16

17.—(1) This paragraph applies to a payment—

- (a) made on or after 10th April 2003, and
- (b) which would otherwise fall to be disregarded by virtue of paragraph 16 of this Part,

where the market value of the shares has been increased by more than 10% by things done, on or after 6th April 1999, otherwise than for genuine commercial purposes.

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- (2) For the purposes of sub-paragraph (1) “the shares” includes—
- (a) the shares subject to the right currently being exercised; and
 - (b) where the right to acquire shares held on 6th April 1999 has been replaced by a subsequent right, includes the shares subject to the replacement right and any subsequent replacement right.
- (3) The following are among the things that are, for the purposes of this paragraph, 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 of contributions under the Act; and
 - (b) any transaction between companies which, at the time of the transaction, 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.
- (4) But sub-paragraph (3)(b) does not apply to a payment for group relief within the meaning given in section 402(6) of the Taxes Act.
- (5) In sub-paragraph (3)(b) “group” means a body corporate and its 51% subsidiaries (within the meaning of section 838 of the Taxes Act), and other expressions used in this paragraph which are defined in, or for the purposes of, paragraph 16 have the same meaning here as they have in that paragraph.]

Textual Amendments

F11 Sch. 3 para. 17 added (10.4.2003) by [The Social Security \(Contributions\) \(Amendment No. 3\) Regulations 2003 \(S.I. 2003/1059\)](#), regs. 1(1), **4(3)**

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