

SCHEDULES

SCHEDULE 22

Section 140

EMPLOYEE SECURITIES AND OPTIONS

Introductory

1 The Income Tax (Earnings and Pensions) Act 2003 (c. 1) is amended as follows.

Main provisions

2 (1) For Chapter 1 of Part 7 (and the heading of that Part) substitute—

“EMPLOYMENT INCOME: INCOME AND EXEMPTIONS RELATING TO SECURITIES

CHAPTER 1

INTRODUCTION

General

417 Scope of Part 7

- (1) This Part contains special rules about cases where securities, interests in securities or securities options are acquired in connection with an employment.
- (2) The rules are contained in—
 - Chapter 2 (restricted securities),
 - Chapter 3 (convertible securities),
 - Chapter 3A (securities with artificially depressed market value),
 - Chapter 3B (securities with artificially enhanced market value),
 - Chapter 3C (securities acquired for less than market value),
 - Chapter 3D (securities disposed of for more than market value),
 - Chapter 4 (post-acquisition benefits from securities),
 - Chapter 5 (securities options),
 - Chapter 6 (approved share incentive plans),
 - Chapter 7 (approved SAYE option schemes),
 - Chapter 8 (approved CSOP schemes),
 - Chapter 9 (enterprise management incentives), and
 - Chapter 10 (priority share allocations).
- (3) The following make provision for amounts to count as employment income—

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Chapters 2 to 6, and
 Chapter 8.

- (4) The following make provision for exemptions and reliefs from income tax—
 Chapters 2 and 3, and
 Chapters 5 to 10.
- (5) Chapter 11 contains supplementary provisions relating to employee benefit trusts.
- (6) Section 5(1) (application of employment income Parts to office-holders generally) does not apply to Chapters 6 to 10; and section 549(5) makes provision about its application to Chapter 11.

418 Other related provisions

- (1) In Part 3—
 Chapter 1 (earnings), and
 Chapter 10 (taxable benefits: residual liability to charge),
 may also have effect in relation to securities and interests in securities (but not securities options).
- (2) Part 7 of Schedule 7 (transitional provisions relating to securities and securities options) may also be relevant.
- (3) In view of section 49 of FA 2000 (phasing out of APS schemes) the following are not rewritten in this Act and continue in force unaffected by the repeals made by this Act—
 section 186 of ICTA (APS schemes) and section 187 of that Act (interpretation) so far as relating to APS schemes, and
 Schedule 9 to ICTA (approval of share schemes) so far as relating to APS schemes and Schedule 10 to that Act (further provisions about APS schemes).
 “APS schemes” means profit sharing schemes approved under Schedule 9 to ICTA.
- (4) Sections 138 to 140 of ICTA (share acquisitions by directors and employees) continue to apply in relation to shares or interests in shares acquired before 26th October 1987 (see paragraph 57 of Schedule 7).

419 Negative amounts treated as nil

If the result given by any formula under any provision of this Part would otherwise be a negative amount, the result is to be taken to be nil instead.

Interpretation of Chapters 1 to 5

420 Meaning of “securities” etc

- (1) Subject to subsections (5) and (6), for the purposes of this Chapter and Chapters 2 to 5 the following are “securities”—

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- (a) shares in any body corporate (wherever incorporated) or in any unincorporated body constituted under the law of a country or territory outside the United Kingdom,
 - (b) debentures, debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness,
 - (c) warrants and other instruments entitling their holders to subscribe for securities (whether or not in existence or identifiable),
 - (d) certificates and other instruments conferring rights in respect of securities held by persons other than the persons on whom the rights are conferred and the transfer of which may be effected without the consent of those persons,
 - (e) units in a collective investment scheme,
 - (f) futures, and
 - (g) rights under contracts for differences or contracts similar to contracts for differences.
- (2) In subsection (1)(e) “collective investment scheme” means arrangements—
- (a) which are made with respect to property of any description, including money, and
 - (b) the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.
- (3) In subsection (1)(f) “futures” means rights under a contract for the sale of a commodity or other property under which delivery is to be made at a future date at a price agreed when the contract is made; and for this purpose a price is to be taken to be agreed when the contract is made—
- (a) if it is left to be determined by reference to the price at which a contract is to be entered into on a market or exchange or could be entered into at a time and place specified in the contract, and
 - (b) in a case where the contract is expressed to be by reference to a standard lot and quality, even if provision is made for a variation in the price to take account of any variation in quantity or quality on delivery.
- (4) For the purposes of subsection (1)(g) a contract similar to a contract for differences is a contract—
- (a) which is not a contract for differences, but
 - (b) the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property or an index or other factor designated in the contract.
- (5) The following are not “securities” for the purposes of this Chapter or Chapters 2 to 5—
- (a) cheques and other bills of exchange, bankers' drafts and letters of credit (other than bills of exchange accepted by a banker),
 - (b) money and statements showing balances on a current, deposit or savings account,

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- (c) leases and other dispositions of property and heritable securities,
 - (d) rights under contracts of insurance (within the meaning of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001), and
 - (e) options.
- (6) The Treasury may by order amend subsections (1) to (5).
- (7) An order under subsection (6) may include any appropriate consequential provision (including provision amending any enactment).
- (8) In this Chapter and Chapters 2 to 5—
- “interest”, in relation to securities (or shares), means an interest in them less than full beneficial ownership and includes an interest in proceeds of their sale, but does not include a right to acquire them,
 - “securities option” means a right to acquire securities, and
 - “shares” includes stock.

421 Meaning of “market value” etc

- (1) In this Chapter and Chapters 2 to 5 “market value” has the same meaning as it has for the purposes of TCGA 1992 by virtue of Part 8 of that Act.
- (2) Where consideration for anything is given in the form of an asset (as opposed to a payment), any reference in this Chapter or any of Chapters 2 to 5 to the amount of the consideration is to the market value of the asset.

421A Meaning of “consideration”

- (1) This section applies for determining for the purposes of Chapters 2 to 5 the amount of the consideration given for anything.
- (2) If any consideration is given partly in respect of one thing and partly in respect of another, the amount given in respect of the different things is to be determined on a just and reasonable apportionment.
- (3) The consideration which is taken to be given wholly or partly for anything does not include the performance of any duties of, or in connection with, an employment.
- (4) No amount is to be counted more than once in calculating the amount of any consideration.

Application of Chapters 2 to 4

421B Application of Chapters 2 to 4

- (1) Subject as follows (and to any provision contained in Chapters 2 to 4) those Chapters apply to securities, or an interest in securities, acquired by a person where the right or opportunity to acquire the securities or interest is available by reason of an employment of that person or any other person.
- (2) For the purposes of subsection (1)—

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- (a) securities are, or an interest in securities is, acquired at the time when the person acquiring the securities or interest becomes beneficially entitled to those securities or that interest (and not, if different, the time when the securities are, or interest is, conveyed or transferred), and
 - (b) “employment” includes a former or prospective employment.
- (3) A right or opportunity to acquire securities or an interest in securities made available by a person’s employer, or by 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—
 - (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) Chapters 2 to 4 cease to apply to securities, or an interest in securities, when subsection (5), (6) or (7) is satisfied.
- (5) This subsection is satisfied immediately after the securities are, or the interest in securities is, disposed of otherwise than to an associated person.
- (6) This subsection is satisfied immediately before the death of the employee.
- (7) This subsection is satisfied 7 years after the first date after the acquisition on which the employee is an employee of none of the following—
 - (a) the employer,
 - (b) (if the securities are, or the interest in securities is an interest in, securities issued by a company) the company by which they are issued, or
 - (c) a person connected with a person within paragraph (a) or (b).
- (8) In this Chapter and Chapters 2 to 4—
 - “the acquisition”, in relation to employment-related securities, means the acquisition of the employment-related securities pursuant to the right or opportunity available by reason of the employment,
 - “the employment”, in relation to employment-related securities, means the employment by reason of which the right or opportunity to acquire the employment-related securities is available (“the employee” and “the employer” being construed accordingly unless otherwise indicated), and
 - “employment-related securities” means securities or an interest in securities to which Chapters 2 to 4 apply (ignoring any provision of any of those Chapters which limits the application of the Chapter to a particular description or descriptions of employment-related securities).

421C Associated persons

- (1) For the purposes of this Chapter and Chapters 2 to 4 the following are “associated persons” in relation to employment-related securities—
 - (a) the person who acquired the employment-related securities on the acquisition,

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- (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 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 were acquired,
 - (c) the person by whom the right or opportunity to acquire the employment-related securities was made available, or
 - (d) the person by whom the employment-related securities (or the securities in which they are an interest) were issued.

421D Replacement and additional securities and changes in interests

- (1) Subsections (2) and (3) apply where an associated person is entitled to employment-related securities (the “original securities”) and either—
- (a) as a result of the conversion of the original securities (or the securities in which they are an interest), or of any other transaction or series of transactions, that person ceases to be entitled to the original securities but that person or another associated person acquires securities or an interest in securities (the “replacement securities”), or
 - (b) by virtue of that person being entitled to the original securities, that person or another associated person acquires other securities or an interest in other securities (the “additional securities”).
- (2) The replacement securities or the additional securities are to be regarded for the purposes of section 421B(1) (securities acquired pursuant to a right or opportunity available by reason of an employment) as acquired pursuant to the same right or opportunity as the original securities.
- (3) Where the market value of the original securities is reduced by reason of the issue of, or of securities including, the replacement securities or the additional securities (or the securities in which they are an interest), the amount of that reduction is to be treated for the purposes of Chapters 2 and 3 as consideration or additional consideration given for the acquisition of the replacement securities or the additional securities.
- (4) Subsections (2) and (3) apply whether or not the replacement securities, or the additional securities, were acquired for consideration.
- (5) Where Chapters 2 to 4 apply to an interest in securities, an increase of that interest is to be treated for the purposes of section 421B(1) (securities acquired pursuant to a right or opportunity available by reason of an

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employment) as a separate interest acquired pursuant to the same right or opportunity as the original interest.

- (6) Where Chapters 2 to 4 apply to an interest in securities, a reduction of that interest (otherwise than by a disposal to an associated person) is to be treated for the purposes of those Chapters as the disposal otherwise than to an associated person of a separate interest proportionate to the reduction.

421E Exclusions: residence etc

- (1) Chapters 2, 3 and 4 do not apply in relation to employment-related securities 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) Chapters 3A to 3D do not apply in relation to employment-related securities 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 any of the charging provisions of Chapter 4 or 5 of Part 2 apply.
- (3) Chapters 2 to 4 do not apply in the case of a former employment if they would not apply if the acquisition had taken place in the last tax year in which the employment was held.
- (4) Chapters 2 to 4 do not apply in the case of a prospective employment if they would not apply if the acquisition had taken place in the first tax year in which the employment is held.
- (5) Where the employment-related securities are replacement securities or additional securities (within the meaning of section 421D), the references in this section to the acquisition are to the acquisition of the original securities (within the meaning of that section).

421F Exclusions: public offers

- (1) Chapters 2 to 4 do not apply in relation to employment-related securities that are shares acquired under the terms of an offer to the public or an interest in shares so acquired.
- (2) In a case within subsection (1) of section 544 (exemption for priority share allocations where offer to employees separate from public offer), any acquisition made under the terms of either the public offer or the employee offer within the meaning of that subsection is to be treated for the purposes of this section as made under the terms of an offer to the public.
- (3) Subsection (2) applies whether or not there is any benefit within section 544(2) (benefit derived from entitlement to priority allocation exempt from income tax).

421G Exclusions: approved plan or scheme securities

Chapters 2 to 4 do not apply to—

- (a) shares awarded or acquired under an approved share incentive plan (within the meaning of Chapter 6 of this Part),

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- (b) shares acquired by the exercise of a share option granted under an approved SAYE option scheme (within the meaning of Chapter 7 of this Part), or
- (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).

421H Meaning of “employee-controlled” etc

- (1) For the purposes of Chapters 2 to 4 a company is “employee-controlled” by virtue of shares of a class if—
 - (a) the majority of the company’s shares of that class (other than any held by or for the benefit of an associated company) are held by or for the benefit of employees of the company or a company controlled by the company, and
 - (b) those employees are together able as holders of the shares to control the company.

In this subsection “employee” includes a person who is to be or has been an employee.

- (2) In this section and Chapters 2 to 4 “associated company” has the same meaning as, by virtue of section 416 of ICTA, it has for the purposes of Part 11 of ICTA.

421I Consideration for acquisition of employment-related securities

- (1) This section applies for determining for the purposes of Chapters 2 to 3A the amount of the consideration given for the acquisition of employment-related securities.
- (2) References to consideration given for the acquisition of the employment-related securities are to consideration given by—
 - (a) the employee, or
 - (b) (if not the employee) the person by whom the employment-related securities were acquired.
- (3) The amount of the consideration given by a person for the acquisition of the employment-related securities includes the amount of any consideration given for a right to acquire the employment-related securities.
- (4) If the right to acquire the employment-related securities (“the new option”) is the whole or part of the consideration for the assignment or release of another right to acquire them (“the old option”), the amount of the consideration given for 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 old option exceeds the amount of any consideration for the assignment or release of the old option, apart from the new option, and
 - (b) any valuable consideration given for the new option, apart from the old option.

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- (5) Two or more transactions are to be treated for the purposes of subsection (4) as a single transaction by which a right to acquire the employment-related securities is assigned for a consideration which consists of or includes another right to acquire the employment-related securities if—
 - (a) the transactions result in a person ceasing to hold a right to acquire the employment-related securities and that person or a connected person coming to hold another right to acquire them, and
 - (b) one or more of the transactions is effected under arrangements to which two or more persons who hold rights to acquire the employment-related securities, in respect of which there may be a liability to tax under Chapter 5 of this Part (securities options), are parties.
- (6) Subsection (5) applies regardless of the order in which the assignment and the acquisition occur.
- (7) In this section “release”, in relation to a right to acquire the employment-related securities, includes agreeing to the restriction of the exercise of the right.

Information

421J Duty to provide information

- (1) This section applies in relation to reportable events.
- (2) Section 421K explains what are reportable events for the purposes of this section.
- (3) Each person who is a responsible person in relation to a reportable event must provide the Inland Revenue with particulars in writing of the reportable event before 7th July in the tax year following that in which the reportable event takes place.
- (4) The Inland Revenue may by notice require any person to provide them with such particulars of any reportable events—
 - (a) which take place in a period specified in the notice, and
 - (b) in relation to which that person is a responsible person,as are required by the notice or, if no reportable event in relation to which that person is a responsible person has taken place in that period, to state that fact.
- (5) A notice under subsection (4) must specify a date by which it must be complied with.
- (6) That date must not be less than 30 days after the date when the notice is given.
- (7) Once one person complies with the duty imposed by subsection (3) in relation to a reportable event, that subsection ceases to impose a duty on any other person in relation to the reportable event.
- (8) Once a person complies with the duty imposed by a notice under subsection (4) by providing the required particulars of a reportable event,

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subsection (3) ceases to impose a duty on that person or any other person in relation to that reportable event.

- (9) Section 421L explains who are the responsible persons in relation to a reportable event.
- (10) The particulars required by, or by a notice under, this section must be provided in a form specified by the Board of Inland Revenue.
- (11) A person need not provide particulars required by, or by a notice under, this section if they have been given in a notice under paragraph 44 of Schedule 5 (enterprise management incentives: notice of option to be given to Inland Revenue).

In other respects the obligations imposed by, or by a notice under, this section and by that paragraph are independent of each other.

- (12) Paragraph 52 of that Schedule contains a duty to deliver annual returns where a company's shares are subject to a qualifying option within the meaning of that Schedule.

421K Reportable events

- (1) This section applies for the purposes of section 421J (duty to provide information).
- (2) Each of the events mentioned in subsection (3) is a reportable event.
- (3) The events are—
 - (a) an acquisition (or an event treated as an acquisition) of securities, an interest in securities or a securities option pursuant to a right or opportunity available by reason of the employment of the person who acquires the securities, interest in securities or securities option or of any other person,
 - (b) an event which is a chargeable event in relation to securities, or an interest in securities, for the purposes of section 426 (chargeable events in relation to restricted securities and restricted interests in securities),
 - (c) an event which is a chargeable event in relation to securities, or an interest in securities, for the purposes of section 438 (chargeable events in relation to convertible securities and interests in convertible securities),
 - (d) the doing of anything which gives rise to a taxable amount counting as employment income under section 446L (artificial enhancement of market value of securities),
 - (e) an event which discharges a notional loan relating to securities, or an interest in securities, under section 446U (securities and interests in securities acquired for less than market value),
 - (f) a disposal of securities, or an interest in securities, by virtue of which Chapter 3D of this Part applies (securities and interests in securities disposed of for more than market value),
 - (g) the receipt of a benefit which gives rise to a taxable amount counting as employment income under section 447 (charge on benefit from securities or interest in securities),

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- (h) the assignment or release of a securities option acquired pursuant to a right or opportunity available by reason of the employment of the person who acquires the securities option or any other person, and
- (i) the receipt of a benefit in money or money's worth which is (or by virtue of section 477(6) is to be regarded as being) received in connection with such a securities option.

421L Persons to whom section 421J applies

- (1) This section applies for the purposes of section 421J (duty to provide information).
- (2) Each of the following persons is a responsible person in relation to a reportable event.
- (3) The persons are—
 - (a) the employer in question,
 - (b) any host employer of the employee in question,
 - (c) the person from whom the securities in question were, or interest or option in question was, acquired, and
 - (d) in relation to a reportable event concerning securities or an interest in securities which are not excluded securities, the person by whom the securities were issued.
- (4) In subsection (3)(b) “host employer” means a person other than the employer in question—
 - (a) for whom the employee in question works at the time of the reportable event, and
 - (b) who would, by virtue of subsection (2) of section 689 (employees of non-UK employers working for a person other than the employer), be treated for the purposes of PAYE regulations as making a payment of PAYE income of the employee in question if a payment to which subsection (5) would apply were made by the employer in question in respect of the period during which the employee works for the other person.
- (5) For the purposes of subsection (4)(b) this subsection would apply to a payment if—
 - (a) it were a payment of PAYE income of the employee, and
 - (b) the conditions in subsection (1)(c) and (d) of section 689 were satisfied in relation to the payment.
- (6) For the purposes of subsection (3)(d) securities are excluded securities in relation to a reportable event if they are—
 - (a) loan stock, bonds or other instruments creating or acknowledging indebtedness issued by or on behalf of any national or regional government or local authority (in the United Kingdom or elsewhere) or any body whose members consists of states, national or regional governments or local authorities, or
 - (b) securities which are issued by a person who, at the time of the reportable event, is not connected with the employer in question and which are listed or dealt in on a recognised stock exchange.”.

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- (2) So far as relating to—
- (a) each of the new Chapters substituted or inserted in Part 7 by the following paragraphs, and
 - (b) each of the Chapters of that Part as originally enacted for which new Chapters are substituted by the following paragraphs,
- sub-paragraph (1) has effect in accordance with the provision made by the following paragraphs for the taking effect of the substitution or insertion.
- 3 (1) For Chapter 2 of Part 7 substitute—

“CHAPTER 2

RESTRICTED SECURITIES

Introduction

422 Application of this Chapter

This Chapter applies to employment-related securities if they are—

- (a) restricted securities, or
 - (b) a restricted interest in securities,
- at the time of the acquisition.

423 “Restricted securities” and “restricted interest in securities”

- (1) For the purposes of this Chapter employment-related securities are restricted securities or a restricted interest in securities if—
- (a) there is any contract, agreement, arrangement or condition which makes provision to which any of subsections (2) to (4) applies, and
 - (b) the market value of the employment-related securities is less than it would be but for that provision.
- (2) This subsection applies to provision under which—
- (a) there will be a transfer, reversion or forfeiture of the employment-related securities, or (if the employment-related securities are an interest in securities) of the interest or the securities, if certain circumstances arise or do not arise,
 - (b) as a result of the transfer, reversion or forfeiture the person by whom the employment-related securities are held will cease to be beneficially entitled to the employment-related securities, and
 - (c) that person will not be entitled on the transfer, reversion or forfeiture to receive in respect of the employment-related securities an amount of at least their market value (determined as if there were no provision for transfer, reversion or forfeiture) at the time of the transfer, reversion or forfeiture.
- (3) This subsection applies to provision under which there is a restriction on—
- (a) the freedom of the person by whom the employment-related securities are held to dispose of the employment-related securities or proceeds of their sale,

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- (b) the right of that person to retain the employment-related securities or proceeds of their sale, or
 - (c) any other right conferred by the employment-related securities, (not being provision to which subsection (2) applies).
- (4) This subsection applies to provision under which the disposal or retention of the employment-related securities, or the exercise of a right conferred by the employment-related securities, may result in a disadvantage to—
- (a) the person by whom the employment-related securities are held,
 - (b) the employee (if not the person by whom they are held), or
 - (c) any person connected with the person by whom they are held or with the employee,
- (not being provision to which subsection (2) or (3) applies).

424 Exceptions

Employment-related securities are not restricted securities or a restricted interest in securities by reason only that any one or more of the following is the case—

- (a) the employment-related securities (or the securities in which they are an interest) are unpaid or partly paid shares which may be forfeited for non-payment of calls and there is no restriction on the meeting of calls by the person by whom they are held,
- (b) that person may be required to offer for sale or transfer the employment-related securities on the employee ceasing, as a result of misconduct, to be employed by the employer or a person connected with the employer, or
- (c) the employment-related securities (or the securities in which they are an interest) may be redeemed on payment of any amount.

Tax exemption on acquisition

425 No charge in respect of acquisition in certain cases

- (1) Subsection (2) applies if the employment-related securities—
- (a) are restricted securities, or a restricted interest in securities, by virtue of subsection (2) of section 423 (provision for transfer, reversion or forfeiture) at the time of the acquisition, and
 - (b) will cease to be restricted securities, or a restricted interest in securities, by virtue of that subsection within 5 years after the acquisition (whether or not they may remain restricted securities or a restricted interest in securities by virtue of the application of subsection (3) or (4) of that section).
- (2) No liability to income tax arises in respect of the acquisition, except as provided by—
- (a) Chapter 3 of this Part (acquisition by conversion),
 - (b) Chapter 3C of this Part (acquisition for less than market value), or
 - (c) Chapter 5 of this Part (acquisition pursuant to securities option).

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- (3) But the employer and the employee may elect that subsection (2) is not to apply to the employment-related securities.
- (4) An election under subsection (3)—
 - (a) is to be made by agreement by the employer and the employee, and
 - (b) is irrevocable.
- (5) Such an agreement—
 - (a) must be made in a form approved by the Board of Inland Revenue, and
 - (b) may not be made more than 14 days after the acquisition.

Tax charge on post-acquisition chargeable events

426 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 428 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 427 explains what are chargeable events for the purposes of this section.
- (5) This section is subject to section 429 (case outside charge under this section).

427 Chargeable events

- (1) This section applies for the purposes of section 426 (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 employment-related securities ceasing to be restricted securities, or a restricted interest in securities, in circumstances in which an associated person is beneficially entitled to the employment-related securities after the event,
 - (b) the variation of any restriction relating to the employment-related securities in such circumstances (without the employment-related securities ceasing to be restricted securities or a restricted interest in securities), and
 - (c) the disposal for consideration of the employment-related securities, or any interest in them, by an associated person otherwise than to another associated person (at a time when they are still restricted securities or a restricted interest in securities).

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- (4) For the purposes of this Chapter there is a variation of a restriction relating to the employment-related securities if any restriction in relation to them is removed or varied.

428 Amount of charge

- (1) The taxable amount for the purposes of section 426 (charge on occurrence of chargeable event) is—

$$UMV \times (IUP - PCP - OP) - CE$$

- (2) UMV is what would be the market value of the employment-related securities immediately after the chargeable event but for any restrictions.

- (3) IUP is—

$$\frac{IUMV - DA}{IUMV}$$

where—

IUMV is what would have been the market value of the employment-related securities at the time of the acquisition but for any restrictions, and

DA is the total of any deductible amounts.

- (4) PCP is the aggregate of the result of the application of the formula—

$$IUP - PCP - OP$$

on each previous event (if any) occurring since the acquisition that was a chargeable event for the purposes of section 426 in relation to the employment-related securities (and so is nil if there has not been such a previous event).

- (5) OP is—

$$\frac{UMV - AMV}{UMV}$$

where AMV is the actual market value of the employment-related securities immediately after the chargeable event.

- (6) CE is any expenses incurred by the holder of the employment-related securities in connection with—

- (a) the employment-related securities ceasing to be restricted securities or a restricted interest in securities,
- (b) the variation of a restriction relating to the employment-related securities, or
- (c) the disposal of the employment-related securities,

together (if the chargeable event is one within section 427(3)(a) or (b) (lifting of restrictions and variation of restriction)) with any consideration given for the employment-related securities ceasing to be restricted securities or a restricted interest in securities or the variation of a restriction relating to the employment-related securities.

Status: This is the original version (as it was originally enacted).

- (7) For the purposes of this section each of the following is a “deductible amount” —
- (a) the amount of any consideration given for the acquisition of the employment-related securities,
 - (b) any amount that constituted earnings from the employee’s employment under Chapter 1 of Part 3 (earnings) in respect of the acquisition of the employment-related securities,
 - (c) any amount that counted as employment income in relation to the employment-related securities under Chapter 2 or 4 of this Part as originally enacted,
 - (d) if the employment-related securities were acquired on a conversion of other employment-related securities, any amount that counted as employment income of the employee under Chapter 3 of this Part (including that Chapter as originally enacted) (convertible securities) by reason of the conversion, and
 - (e) if the acquisition of the employment-related securities was pursuant to a securities option, any amount that counted as employment income of the employee under section 476 (or section 476 or 477 as originally enacted) (acquisition of securities pursuant to securities option) by reason of the acquisition.
- (8) If the employment-related securities are convertible securities, or an interest in convertible securities, their market value is to be determined for the purposes of this section as if they were not.
- (9) Where the chargeable event is one within section 427(3)(c) (disposal) and CD is less than AMV, the taxable amount for the purposes of section 426 is the amount determined under subsection (1) multiplied by—

$$\frac{CD}{AMV}$$

where—

CD is the consideration given for the employment-related securities,
and

AMV is the actual market value of the employment-related securities immediately after the chargeable event.

429 Case outside charge under section 426

- (1) Section 426 (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) the provision by virtue of which the employment-related securities are restricted securities, or a restricted interest in securities, applies to all the company’s shares of the class,
 - (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.

Status: This is the original version (as it was originally enacted).

- (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 427(3)(a) (lifting of restrictions), if the provision mentioned in subsection (1)(b) ceases to apply to them,
 - (b) in the case of a chargeable event within section 427(3)(b) (variation of restriction), if that provision is varied in relation to them in the same way as in relation to the employment-related securities, or
 - (c) in the case of a chargeable event within section 427(3)(c) (disposal), if they are disposed of.
- (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.

430 Election for outstanding restrictions to be ignored

- (1) The employer and the employee may elect that—
 - (a) on a chargeable event the taxable amount for the purposes of section 426 is to be determined by applying section 428(1) as if it did not include a reference to OP, and
 - (b) sections 426 to 429 are not to apply to the employment-related securities after that chargeable event.
- (2) An election under this section—
 - (a) is to be made by agreement by the employer and the employee, and
 - (b) is irrevocable.
- (3) Such an agreement—
 - (a) must be made in a form approved by the Board of Inland Revenue, and
 - (b) may not be made more than 14 days after the chargeable event.

Status: This is the original version (as it was originally enacted).

Supplementary

431 Election for full or partial disapplication of this Chapter

- (1) The employer and the employee may elect in relation to employment-related securities which are restricted securities or a restricted interest in securities that—
 - (a) for the relevant tax purposes their market value at the time of the acquisition is to be calculated as if they were not, and
 - (b) sections 425 to 430 are not to apply to the employment-related securities.
- (2) Or the employer and the employee may elect in relation to employment-related securities which are restricted securities or a restricted interest in securities that—
 - (a) for the relevant tax purposes their market value at the time of the acquisition is to be calculated, and
 - (b) sections 425 to 430 are to apply to the employment-related securities,as if any specified restriction did not apply to the employment-related securities.
- (3) For the purposes of subsections (1) and (2) “the relevant tax purposes” are—
 - (a) determining any amount that is to constitute earnings from the employment under Chapter 1 of Part 3 (earnings),
 - (b) determining the amount of any gain realised on the occurrence of an event that is a chargeable event by virtue of section 439(3)(a) (conversion),
 - (c) operating Chapter 3C of this Part (acquisition of securities for less than market value), and
 - (d) determining any amount that counts as employment income of the employee under Chapter 5 of this Part (securities acquired pursuant to securities option).
- (4) An election under this section—
 - (a) is to be made by agreement by the employer and the employee, and
 - (b) is irrevocable.
- (5) Such an agreement—
 - (a) must be made in a form approved by the Board of Inland Revenue, and
 - (b) may not be made more than 14 days after the acquisition.

432 Definitions

- (1) In this Chapter—
 - “interest”, in relation to securities,
 - “securities”,
 - “securities option”, and
 - “shares”,

Status: This is the original version (as it was originally enacted).

- 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 429),
“the employer”,
“the employment”, 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—
“restricted interest in securities”, and
“restricted securities”,
have the meaning indicated in sections 423 and 424.
- (8) In this Chapter “restriction”, in relation to securities or an interest in securities, means provision relating to the securities or interest which is made by any contract, agreement, arrangement or condition and to which any of subsections (2) to (4) of section 423 applies.
- (9) In this Chapter “variation”, in relation to a restriction, has the meaning indicated in section 427(4).
- (10) In this Chapter “convertible securities” has the same meaning as in Chapter 3 of this Part (see section 436).”.
- (2) Sub-paragraph (1) has effect on and after such day as the Treasury may by order made by statutory instrument appoint but does not affect any securities, or interests in securities, acquired before 16th April 2003.
- (3) Section 431 has effect in relation to securities, or interests in securities, acquired before the day appointed under sub-paragraph (2)—
- (a) with the substitution in subsections (1)(b) and (2)(b) for “sections 425 to 430” of “section 426 as originally enacted and sections 426 to 430 as substituted by paragraph 3(1) of Schedule 22 to the Finance Act 2003”, and
- (b) with the substitution in subsection (5)(b) for “the acquisition” of “the day appointed under paragraph 3(2) of Schedule 22 to the Finance Act 2003”.

Status: This is the original version (as it was originally enacted).

- (4) But sub-paragraph (3) does not apply where in relation to the securities or interest in securities an amount counts as employment income of the employee under section 427 or 449 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) as originally enacted.
- 4 (1) For Chapter 3 of Part 7 substitute—

“CHAPTER 3

CONVERTIBLE SECURITIES

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,
- (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 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—

$$AG - CE$$

Status: This is the original version (as it was originally enacted).

- (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—

$$DC - CMVERS$$
- (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.
- (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,
 - (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.

Status: This is the original version (as it was originally enacted).

- (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).
- (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.”.

- (2) Sub-paragraph (1) has effect on and after the day appointed under paragraph 3(2) (so that, apart from section 437, the provisions of Chapter 3 of Part 7 as substituted by that sub-paragraph apply on and after that day in relation to employment-related securities irrespective of the date of the acquisition).
- 5 (1) After Chapter 3 of Part 7 insert—

“CHAPTER 3A

SECURITIES WITH ARTIFICIALLY DEPRESSED MARKET VALUE

Introduction

446A Application of this Chapter

- (1) This Chapter applies in certain cases where the market value of employment-related securities (or other relevant securities or interests in securities) is reduced by things done otherwise than for genuine commercial purposes.
- (2) The following are among the things that are, for the purposes of this Chapter, 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).
- (3) In subsection (2)(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.

Tax charge on acquisition

446B Charge on acquisition

- (1) This section applies where the market value of employment-related securities at the time of the acquisition 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 acquisition.
- (2) The taxable amount determined under section 446C counts as employment income of the employee for the tax year in which the acquisition occurs.
- (3) But this section does not apply 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.
- (4) This section does not affect any liability to income tax arising in respect of the acquisition of the employment-related securities under—

Status: This is the original version (as it was originally enacted).

- (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 3C of this Part (acquisition for less than market value), or
- (e) Chapter 5 of this Part (acquisition pursuant to securities option).

446C Amount of charge

- (1) The taxable amount for the purposes of section 446B (charge on acquisition) is—

FMV MV

- (2) FMV is what would be the market value of the employment-related securities at the time of the acquisition if the things mentioned in section 446B(1) had not been done.
- (3) MV is the actual market value of the employment-related securities at the time of the acquisition.
- (4) But where what would be MV is less than the amount of any consideration given for the acquisition of the employment-related securities, MV is the amount of that consideration.
- (5) This section is subject to section 446D (restricted securities and convertible securities).

446D Restricted securities and convertible securities

- (1) Where the employment-related securities are restricted securities or a restricted interest in securities, FMV (but not MV) is to be determined as if the employment-related securities were not restricted securities or a restricted interest in securities; and, accordingly, sections 426 to 431 (post-acquisition charges on restricted securities) do not apply to the employment-related securities.
- (2) Where the employment-related securities are convertible securities or an interest in convertible securities, FMV and MV are to be determined as if they were not.

Other tax charges

446E Charge on restricted securities

- (1) This section applies where the market value of employment-related securities which are restricted securities or a restricted interest in securities is artificially low—
 - (a) immediately after an event which is a chargeable event in relation to the employment-related securities for the purposes of section 426 (charge on restricted securities), or
 - (b) on 5th April in any year.

Status: This is the original version (as it was originally enacted).

- (2) The market value of the employment-related securities is artificially low where it has been reduced by at least 10% as a result of things done otherwise than for genuine commercial purposes within the relevant period.
- (3) The reference in subsection (2) of section 428 (amount of charge on restricted securities) to what would be the market value of the employment-related securities is, so far as it relates to subsection (1) of that section, a reference to what would be the market value but for the reduction as a result of the things done as mentioned in subsection (2) (and but for any restrictions).
- (4) In a case within subsection (1)(b), there shall be treated as occurring on the 5th April concerned a chargeable event within section 427(3)(a) (lifting of restrictions) in relation to the employment-related securities.
- (5) “The relevant period” is the period of 7 years ending with—
 - (a) in a case within subsection (1)(a), the chargeable event concerned, or
 - (b) in a case within subsection (1)(b), the 5th April concerned.
- (6) But 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, the relevant period is the period beginning 7 years before the acquisition.

446F Adjustment of market value: conditional interests

- (1) This section applies where the market value of an employee’s interest in shares which is only conditional is artificially low immediately after a chargeable event relating to the shares under section 427 as originally enacted.
- (2) The market value of the shares is artificially low where it has been reduced by at least 10% as a result of things done otherwise than for genuine commercial purposes within the period beginning—
 - (a) 7 years before the chargeable event, or
 - (b) with 16th April 2003,whichever is later.
- (3) There is a chargeable event in relation to shares if section 427 (as originally enacted) applies in relation to them.
- (4) The reference in the definition of MV in section 428(1) (as originally enacted) to the market value of the employee’s interest is to what would be the market value but for the reduction as a result of the things done as mentioned in subsection (2).
- (5) Expressions used in this section and in Chapter 2 of this Part as originally enacted have the same meaning in this section as in that Chapter.

446G Adjustment of market value: consideration for entitlement to convert

- (1) This section applies where the market value of employment-related securities which are convertible securities or an interest in convertible securities (determined as if they were not) has been reduced by at least 10%

Status: This is the original version (as it was originally enacted).

as a result of things done otherwise than for genuine commercial purposes within the period of 7 years ending with the acquisition.

- (2) The reference to the market value of the employment-related securities in the definition of NCMV in section 442(5) (value of convertible securities at time of acquisition) is to what would be the market value but for the reduction as a result of the things done as mentioned in subsection (1) (and but for the fact that they are convertible securities or an interest in convertible securities).

446H Adjustment of market value: charge on conversion

- (1) This section applies where the market value of securities (“the converted securities”) into which employment-related securities (or securities in which employment-related securities are an interest) are converted is artificially low at the time of an event which is a chargeable event in relation to the employment-related securities by virtue of section 439(3)(a) (conversion).
- (2) The market value of the converted securities is artificially low where it 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 chargeable event.
- (3) The references to the market value of the converted securities in the definition of CMVCS in section 441(6) (amount of gain realised by conversion) are to what would be the market value but for the reduction as a result of the things done as mentioned in subsection (2).

446I Adjustment of consideration or benefit received

- (1) This section applies where any consideration or benefit mentioned in—
- (a) section 428(9) (consideration on disposal of restricted securities),
 - (b) section 441(4), (5) or (9) (consideration for disposal of convertible securities or release of entitlement to convert or benefit received in respect of entitlement to convert),
 - (c) section 446C(4) (securities with artificially depressed market value: MV to be amount of consideration),
 - (d) sections 446X and 446Y(3) (consideration for disposal of securities exceeding market value), or
 - (e) section 448 (securities benefit not otherwise subject to tax),
- consists (in whole or in part) in the provision of securities or an interest in securities the market value of which is artificially low.
- (2) The market value of any securities or interest in securities is artificially low where it 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.
- (3) The market value of the consideration or benefit consisting in the provision of the securities or interest in securities is for the purposes of the provision or provisions concerned to be taken to be what it would be but for the reduction as a result of the things done as mentioned in subsection (2).

Supplementary

446J Definitions

- (1) In this Chapter—
“interest”, in relation to securities, and
“securities”,
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”, and
“employment-related securities”,
have the meaning indicated in section 421B(8).
 - (5) In this Chapter—
“restricted interest in securities”, and
“restricted securities”,
have the same meaning as in Chapter 2 of this Part (see sections 423 and 424).
 - (6) In this Chapter “restriction” has the same meaning as in Chapter 2 of this Part (see section 432(8)).
 - (7) In this Chapter “convertible securities” has the same meaning as in Chapter 3 of this Part (see section 436).”.
- (2) Sub-paragraph (1) has effect on and after 16th April 2003 (so that sections 446A, 446F to 446H, 446I(1)(b) to (e), (2) and (3) and 446J apply on and after that date in relation to employment-related securities irrespective of the date of the acquisition).
 - (3) Sections 446E and 446I(1)(a) do not affect any securities, or interests in securities, acquired before 16th April 2003; and, in relation to any securities or interests in securities acquired on or after that date but before the day appointed under paragraph 3(2), those provisions apply only on or after that appointed day.
 - (4) Section 446F—
 - (a) applies in relation to conditional interests in shares acquired before 16th April 2003, and
 - (b) applies during the period beginning with that date and ending with the day preceding that appointed day in relation to conditional interests in shares acquired during that period.
- 6 (1) After Chapter 3A of Part 7 (inserted by paragraph 5(1)) insert—

Status: This is the original version (as it was originally enacted).

“CHAPTER 3B

SECURITIES WITH ARTIFICIALLY ENHANCED MARKET VALUE

Introduction

446K Application of this Chapter

- (1) This Chapter applies in certain cases where the market value of employment-related securities is increased by things done otherwise than for genuine commercial purposes.
- (2) The following are among the things that are, for the purposes of this Chapter, 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).
- (3) In subsection (2)(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.
- (4) In this Chapter, in relation to the market value of the employment-related securities—

“non-commercial increase” means an increase in the market value as a result of anything done otherwise than for genuine commercial purposes, and

“non-commercial reduction” means a reduction in the market value as a result of anything done otherwise than for genuine commercial purposes.

Charge on non-commercial increases

446L Charge on non-commercial increases

- (1) This section applies in relation to employment-related securities where on a date that is the valuation date in relation to a relevant period IMV is at least 10% greater than MV.
- (2) The taxable amount determined under subsection (4) counts as employment income of the employee for the relevant tax year (but subject to sections 446M and 446N).
- (3) The “relevant tax year” is the tax year in which the valuation date falls.
- (4) The taxable amount is—

Status: This is the original version (as it was originally enacted).

IMV – MV

- (5) IMV is the market value of the employment-related securities on the valuation date.
- (6) MV is the amount that would be the market value of the employment-related securities on the valuation date if any non-commercial increases during the relevant period were disregarded.
- (7) For the purposes of subsections (5) and (6)—
 - (a) any restrictions having effect in relation to the employment-related securities on the valuation date, and
 - (b) any non-commercial reductions during the relevant period, are to be disregarded.

446M Securities subject to restriction on valuation date

- (1) This section applies where on the valuation date the employment-related securities are relevant restricted securities.
- (2) The amount determined under section 446L(4) is to be multiplied by CP.
- (3) CP is—

$$1 - OP$$

where OP is the amount that would be determined under section 428(5) (amount of charge on chargeable event in relation to restricted securities) on the valuation date if there were on that date a chargeable event (resulting in no tax charge).

- (4) For the purposes of this section the employment-related securities are relevant restricted securities if they are restricted securities or a restricted interest in securities but are not subject to—
 - (a) an election under section 430 (election to ignore outstanding restrictions) in relation to a chargeable event which occurred before the valuation date, or
 - (b) an election under section 431(1) (election to treat securities as not subject to restrictions).
- (5) If sections 425 to 430 apply to the employment-related securities in accordance with section 431(2) (election to treat securities as not subject to specified restrictions), the reference in subsection (3) to the amount that would be determined under section 428(5) is to the amount that would be so determined in accordance with section 431(2).

446N Securities subject to restriction during relevant period

- (1) This section applies where the employment-related securities have been restricted securities or a restricted interest in securities at any time during the relevant period.
- (2) DA is to be deducted from the amount determined under section 446L(4) (or, where section 446M applies, the amount determined under sections 446L(4) and 446M).

Status: This is the original version (as it was originally enacted).

- (3) DA is the aggregate of the amounts arrived at under subsection (4) in relation to each event occurring during the relevant period that is a chargeable event in relation to the employment-related securities.
- (4) The amount is—
- T A – A R T A**
- (5) TA is the taxable amount actually determined under section 428 in relation to the chargeable event.
- (6) ARTA is the taxable amount which would have been determined under section 428 in relation to the chargeable event if any non-commercial increases during the period—
- (a) beginning at the same time as the relevant period, and
 - (b) ending immediately before the chargeable event,
- had been disregarded.

Supplementary

446O “Relevant period” and “valuation date”

- (1) This section explains what is meant by “relevant period” and “valuation date” in this Chapter.
- (2) The first relevant period in relation to employment-related securities is the period beginning with the date of the acquisition and ending with the following 5th April.
- (3) After the first relevant period, each period beginning with 6th April and ending with the following 5th April is a relevant period in relation to the employment-related securities.
- (4) But if this Chapter ceases to apply to the employment-related securities during a relevant period, the relevant period ends with the date on which this Chapter ceases to apply to them.
- (5) And if this Chapter ceases to apply to an interest in the employment-related securities during a relevant period, the relevant period ends in relation to that interest with the date on which this Chapter ceases to apply to that interest.
- (6) In a case where subsection (5) applies, this Chapter has effect separately in relation to that interest and the remainder of the employment-related securities.
- (7) In this Chapter “valuation date”, in relation to a relevant period, means the date with which the relevant period ends.

446P Definitions

- (1) In this Chapter “interest”, in relation to securities, has 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”,
“the employee”, and
“employment-related securities”,
have the meaning indicated in section 421B(8).
- (4) In this Chapter—
“restricted interest in securities”, and
“restricted securities”,
have the same meaning as in Chapter 2 of this Part (see sections 423 and 424).
- (5) In this Chapter “chargeable event” means an event which is a chargeable event for the purposes of section 426.
- (6) In this Chapter “restriction” has the same meaning as in Chapter 2 of this Part (see section 432(8)).
- (7) In this Chapter—
“non-commercial increase”, and
“non-commercial reduction”,
have the meaning indicated in section 446K(4).
- (8) In this Chapter—
“relevant period”, and
“valuation date”,
have the meaning indicated in section 446O.”.
- (2) Subject as follows, sub-paragraph (1) has effect on and after 16th April 2003 (so that it applies on and after that date in relation to employment-related securities irrespective of the date of the acquisition).
- (3) Sections 446M and 446N do not affect any securities, or interests in securities, acquired before 16th April 2003; and, in relation to any securities or interests in securities acquired on or after that date but before the day appointed under paragraph 3(2), those sections apply only on and after that appointed day.
- (4) For the purposes of section 446O employment-related securities acquired before 16th April 2003 are to be treated as acquired on that date.
- 7 (1) After Chapter 3B of Part 7 (inserted by paragraph 6(1)) insert—

“CHAPTER 3C

SECURITIES ACQUIRED FOR LESS THAN MARKET VALUE

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

Status: This is the original version (as it was originally enacted).

- (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.
- (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, and
 - (c) subsection (3) or (4) is satisfied.
- (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 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.

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.
- (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—

$$MV - DA$$

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,
 - (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,

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- (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.
- (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.

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.
- (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.

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).”.
- (2) Sub-paragraph (1) has effect in relation to securities, and interests in securities, acquired on or after 16th April 2003.
- 8 (1) After Chapter 3C of Part 7 (inserted by paragraph 7(1)) insert—

“CHAPTER 3D

SECURITIES DISPOSED OF FOR MORE THAN MARKET VALUE

446X Application of this Chapter

This Chapter applies if—

- (a) employment-related securities are disposed of by an associated person so that no associated person is any longer beneficially entitled to them, and
- (b) the disposal is for a consideration which exceeds the market value of the employment-related securities at the time of the disposal.

Status: This is the original version (as it was originally enacted).

446Y Amount treated as income

- (1) Where this Chapter applies the amount determined under subsection (3) counts as employment income of the employee for the relevant tax year.
- (2) The “relevant tax year” is the tax year in which the disposal occurs.
- (3) The amount is—

$$CD - MV - DA$$

where—

CD is the amount of the consideration given on the disposal,
 MV is the market value of the employment-related securities at the time of the disposal, and
 DA is the amount of any expenses incurred in connection with the disposal.

446Z Definitions

- (1) In this Chapter “market value” has the meaning indicated in section 421(1).
 - (2) For the purposes of this Chapter sections 421(2) and 421A apply for determining the amount of the consideration given for anything.
 - (3) In this Chapter—
 “the employee”, and
 “employment-related securities”,
 have the meaning indicated in section 421B(8).
 - (4) In this Chapter “associated person” has the meaning indicated in section 421C.”.
- (2) Sub-paragraph (1) has effect in relation to securities, and interests in securities, disposed of on or after 16th April 2003.

- 9 (1) For Chapter 4 of Part 7 substitute—

“CHAPTER 4

POST-ACQUISITION BENEFITS FROM SECURITIES

447 Charge on other chargeable benefits from securities

- (1) This Chapter applies if an associated person receives a benefit by virtue of the ownership of employment-related securities by that person or another associated person.
- (2) The taxable amount determined under section 448 counts as employment income of the employee for the relevant tax year.
- (3) The “relevant tax year” is the tax year in which the benefit is received.

Status: This is the original version (as it was originally enacted).

(4) This section does not apply if the benefit is otherwise chargeable to income tax.

(5) This section is subject to section 449 (case outside this Chapter).

448 Amount of charge

The taxable amount for the purposes of section 447 (charge on other chargeable benefits) is the amount or market value of the benefit.

449 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) a similar benefit is received by the owners of all the company's shares of the class, and
 - (c) subsection (2) or (3) is satisfied.
- (2) This subsection is satisfied if, immediately before the receipt of the benefit, the company is employee-controlled by virtue of holdings of shares of the class.
- (3) This subsection is satisfied if, immediately before the receipt of the benefit, 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.
- (4) For the purposes of subsection (3) 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.

450 Definitions

- (1) In this Chapter—
- “interest”, in relation to shares, and
 - “shares”,
- have the meaning indicated in section 420(8).
- (2) In this Chapter “market value” has the meaning indicated in section 421(1).
- (3) In this Chapter—
- “the employee” (except in section 449), and

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- “employment-related securities”,
have the meaning indicated in section 421B(8).
- (4) In this Chapter “associated person” has the meaning indicated in section 421C.
- (5) In this Chapter—
“associated company”, and
“employee-controlled”,
have the meaning indicated in section 421H.”.
- (2) Subject to sub-paragraph (3), sub-paragraph (1) has effect on and after 16th April 2003 (so that it applies on and after that date in relation to employment-related securities irrespective of the date of the acquisition).
- (3) The provisions of Chapter 4 as originally enacted which are mentioned in sub-paragraph (4)—
- (a) continue to apply in relation to shares, and interests in shares, acquired before 16th April 2003, and
 - (b) apply in relation to shares, and interests in shares, acquired on or after that date until the day appointed under paragraph 3(2).

In this sub-paragraph “shares” means shares in a company or securities as defined in section 254(1) of the Taxes Act 1988 issued by a company.

- (4) The provisions are—
section 450(1), (2), (3)(a), (4), (5) and (6)(a), and
sections 447 to 449, section 451, section 452(1) to (3), section 461(1) and (2),
section 462, sections 464 to 466 and sections 468 to 470, so far as relevant
for the purposes of those provisions of section 450 (or the other provisions
mentioned in this subsection so far as so relevant).
- 10 (1) For Chapter 5 of Part 7 substitute—

“CHAPTER 5

SECURITIES OPTIONS

Introduction

471 Options to which this Chapter applies

- (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

- (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

- (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

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- (b) Chapter 10 of that Part (taxable benefits: residual liability to charge), when an employment-related securities option is acquired.
- (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

- (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

- (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).

Tax charge on post-acquisition chargeable events

476 Charge on occurrence of chargeable event

- (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

- (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

- (1) The taxable amount for the purposes of section 476 (charge on occurrence of chargeable event) is—

$$AG - DA$$

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

- (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))—

$$MV - C$$

- (3) In subsection (2)—

MV is the market value of the securities that are acquired at the time when they are acquired, and

Status: This is the original version (as it was originally enacted).

C is the amount of any consideration given for the securities that are acquired.

- (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

- (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

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- (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—
 - (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

- (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

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- 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—
- (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

- (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.

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- (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

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

- (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).

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- (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).
- (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.”.
- (2) Sub-paragraph (1) has effect—
 - (a) on and after 16th April 2003 in relation to employment-related securities options which are not share options, and
 - (b) on and after the day appointed under paragraph 3(2) in relation to employment-related securities options which are share options;and for this purpose “share options” means rights to acquire shares in a company or securities as defined in section 254(1) of the Taxes Act 1988 issued by a company.

PAYE

- 11 (1) Section 509 (modification of section 696 where charge on shares ceasing to be subject to plan) is amended as follows.
 - (2) In subsection (4), for “subsection (5)” substitute “subsections (5) and (6)”.
 - (3) After subsection (5) insert—
 - “(6) In determining for the purposes of this section (and of section 696 in its application in accordance with this section) whether the shares are readily convertible assets, section 702 has effect with the omission of subsections (5A) to (5D).”.
- 12 (1) For sections 698 and 699 (PAYE: conditional interests in shares and convertible shares) substitute—

“698 PAYE: special charges on employment-related securities

- (1) This section applies where by reason of the operation of—
 - (a) section 426 (chargeable events in relation to restricted securities and restricted interests in securities),

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- (b) section 438 (chargeable events in relation to convertible securities and interests in convertible securities),
 - (c) section 446B (charge on acquisition where market value of securities or interest artificially depressed),
 - (d) section 446L (charge where market value of securities artificially enhanced),
 - (e) section 446U (securities or interest acquired for less than market value: charge on discharge of notional loan),
 - (f) section 446Y (charge where securities or interest disposed of for more than market value), or
 - (g) section 447 (chargeable benefit from securities or interest),
- in relation to employment-related securities, an amount counts as employment income of an employee.
- (2) Sections 684 to 691 and 696 have effect as if—
- (a) the employee were provided with PAYE income in the form of the employment-related securities by the employer on the relevant date, and
 - (b) the reference in subsection (2) of section 696 to the amount of income likely to be PAYE income in respect of the provision of the asset were to the amount likely to count as employment income.
- (3) In a case in which the employment-related securities are not readily convertible assets, if—
- (a) the amount counts as income by virtue of section 427(3)(c), 439(3)(b), (c) or (d), 446Y or 447, and
 - (b) the whole or any part of the consideration or benefit concerned takes the form of a payment or consists in the provision of an asset,
- subsection (4) applies.
- (4) Sections 684 to 691 and 696 have effect —
- (a) to the extent that the consideration or benefit takes the form of a payment, as if it were a payment of PAYE income of the employee by the employer, and
 - (b) to the extent that the consideration or benefit consists in the provision of an asset, as if the provision of the asset were the provision of PAYE income in the form of the asset by the employer on the relevant date.
- (5) Section 696 as applied by subsection (4)(b) has effect as if the reference in subsection (2) of that section to the amount of income likely to be PAYE income were to the same proportion of the amount likely to count as employment income as so much of the consideration or benefit as consists in the provision of the asset bears to the whole of the consideration or benefit.
- (6) In this section “the relevant date” means—
- (a) in relation to an amount counting as employment income under section 426 or 438, the date on which the chargeable event in question occurs,
 - (b) in relation to an amount counting as employment income under section 446B, the date of the acquisition of the securities or interest in securities in question,

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- (c) in relation to an amount counting as employment income under section 446L, the valuation date in question,
 - (d) in relation to an amount counting as employment income under section 446U, the date on which the notional loan in question is treated as discharged,
 - (e) in relation to an amount counting as employment income under section 446Y, the date of the disposal of the securities or interest in securities in question, and
 - (f) in relation to an amount counting as employment income under section 447, the date on which the benefit in question is received.
- (7) In this section “employment-related securities” has the same meaning as in Chapters 1 to 4 of Part 7.”.
- (2) Sub-paragraph (1) has effect on and after the day appointed under paragraph 3(2) but does not affect the operation of section 698 as originally enacted in relation to any securities, or interests in securities, acquired before 16th April 2003.
- 13 (1) For section 700 (PAYE: gains from share options) substitute—

“700 PAYE: gains from securities options

- (1) This section applies where by reason of the operation of section 476 (acquisition of securities pursuant to securities option etc) in relation to an employment-related securities option an amount counts as employment income of an employee.
- (2) In a case where the amount counts as employment income by virtue of section 477(3)(a) (acquisition of securities), sections 684 to 691 and 696 have effect as if—
 - (a) the employee were provided with PAYE income in the form of the securities by the employer on the relevant date, and
 - (b) the reference in subsection (2) of section 696 to the amount of income likely to be PAYE income in respect of the provision of the asset were to the amount likely to count as employment income.
- (3) In a case where the amount counts as income by virtue of section 477(3)(b) or (c) (assignment or release for consideration or receipt of benefit), sections 684 to 691 and 696 have effect —
 - (a) to the extent that the consideration or benefit takes the form of a payment, as if it were a payment of PAYE income of the employee by the employer, and
 - (b) to the extent that the consideration or benefit consists in the provision of an asset, as if the provision of the asset were the provision of PAYE income in the form of the asset by the employer on the relevant date.
- (4) Section 696 as applied by subsection (3)(b) has effect as if the reference in subsection (2) of that section to the amount of income likely to be PAYE income were to the same proportion of the amount likely to count as employment income as so much of the consideration or benefit as consists in the provision of the asset bears to the whole of the consideration or benefit.

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- (5) In this section “the relevant date” means the date on which the chargeable event in question occurs.
- (6) In this section—
“employment-related securities option”, and
“securities”,
have the same meaning as in Chapter 5 of Part 7.”.
- (2) Sub-paragraph (1) has effect on and after the day appointed under paragraph 3(2).
- 14 (1) In section 701(2)(b) (“asset” not to include vouchers or credit-tokens), omit “subject to section 700(6),”.
- (2) Sub-paragraph (1) has effect on and after the day appointed under paragraph 3(2).
- 15 (1) Section 702 (meaning of “readily convertible asset”) is amended as follows.
- (2) After subsection (5) insert—
- “(5A) An asset consisting in securities which is not a readily convertible asset apart from this subsection is to be treated as a readily convertible asset unless the securities are shares that are corporation tax deductible.
- (5B) For the purposes of subsection (5A) shares are corporation tax deductible if they are acquired by a person—
- (a) by reason of that, or another person's, employment with a company, or
- (b) pursuant to an option granted by reason of that, or another person's, employment with a company,
- and the company is entitled to corporation tax relief in respect of the shares under Schedule 23 to the Finance Act 2003 (corporation tax relief for employee share acquisition).
- (5C) If a person acquires additional shares by virtue of holding shares that are corporation tax deductible, the additional shares are to be treated for the purposes of subsection (5A) as if they were corporation tax deductible.
- (5D) If—
- (a) on a person ceasing to be beneficially entitled to shares that are corporation tax deductible, that person acquires other shares, and
- (b) the circumstances are such that the shares to which the person ceases to be beneficially entitled constitute “original shares” and the other shares constitute a “new holding” for the purposes of sections 127 to 130 of TCGA 1992,
- the shares that constitute the new holding are to be treated for the purposes of subsection (5A) as if they were corporation tax deductible.”.
- (3) In subsection (6), after the definition of “money debt” insert—
- ““securities” has the same meaning as in Chapters 1 to 5 of Part 7 (employment income from securities) (see section 420),
- “shares” includes—
- (a) an interest in shares, and
- (b) stock or an interest in stock.”.

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- (4) For the purposes of section 702, shares are to be treated as corporation tax deductible during an accounting period which began before 1st January 2003 if they would have been corporation tax deductible had the accounting period begun on or after that date.

Consequential amendments

- 16 (1) In section 3(1) (structure of employment income Parts), in the entry relating to Part 7, for “share-related income and exemptions” substitute “income and exemptions relating to securities and securities options acquired in connection with an employment”.
- (2) Sub-paragraph (1) has effect on and after 16th April 2003.
- 17 (1) In section 7(6)(b) (employment income), for “(share-related income and exemptions)” substitute “(income and exemptions relating to securities and securities options)”.
- (2) Sub-paragraph (1) has effect on and after 16th April 2003.
- 18 (1) In section 19(2) (year in which earnings treated as received), omit the entries relating to Chapters 8 and 9 of Part 3.
- (2) Sub-paragraph (1) has effect—
- (a) so far as relating to Chapter 8 of Part 3, in accordance with the provision made for the repeal of that Chapter, and
- (b) so far as relating to Chapter 9 of Part 3, in accordance with the provision made for the repeal of that Chapter.
- 19 (1) In section 32(2) (receipt of non-money earnings), omit the entries relating to Chapters 8 and 9 of Part 3.
- (2) Sub-paragraph (1) has effect—
- (a) so far as relating to Chapter 8 of Part 3, in accordance with the provision made for the repeal of that Chapter, and
- (b) so far as relating to Chapter 9 of Part 3, in accordance with the provision made for the repeal of that Chapter.
- 20 (1) In section 63(1) (the benefits code), omit the entries relating to Chapters 8 and 9 of Part 3.
- (2) Sub-paragraph (1) has effect—
- (a) so far as relating to Chapter 8 of Part 3, in accordance with the provision made for the repeal of that Chapter, and
- (b) so far as relating to Chapter 9 of Part 3, in accordance with the provision made for the repeal of that Chapter.
- 21 (1) In section 64 (relationship between earnings and benefits code), omit subsections (5) and (6).
- (2) Sub-paragraph (1) has effect in accordance with the provision made for the repeal of Chapter 8 of Part 3.
- 22 (1) Omit Chapter 8 of Part 3.
- (2) Sub-paragraph (1) has effect in relation to shares, and interests in shares, acquired on or after 16th April 2003.

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- 23 (1) Omit Chapter 9 of Part 3.
- (2) Sub-paragraph (1) has effect in relation to shares, and interests in shares, disposed of on or after 16th April 2003.
- 24 (1) Section 216 (provisions not applicable to lower-paid employments) is amended as follows.
- (2) In subsection (4), omit the entries relating to Chapters 8 and 9 of Part 3.
- (3) In subsection (6), omit the entries relating to section 195(3) and section 199(4).
- (4) Sub-paragraphs (1) to (3) have effect—
- (a) so far as relating to Chapter 8 of Part 3, in accordance with the provision made for the repeal of that Chapter, and
- (b) so far as relating to Chapter 9 of Part 3, in accordance with the provision made for the repeal of that Chapter.
- 25 (1) Section 227(4) (employment income: exemptions) is amended as follows.
- (2) For paragraphs (a) and (b) substitute—
- “(a) section 425 (restricted securities: no charge in respect of acquisition in certain circumstances),
- (b) section 475 (no charge in respect of acquisition of securities option),”.
- (3) Omit paragraphs (d), (f) and (h).
- (4) This paragraph has effect—
- (a) so far as relating to section 425, in accordance with the provision made for the substitution of Chapter 2 of Part 7, and
- (b) otherwise, in accordance with the provision made for the substitution of Chapter 5 of Part 7.
- 26 (1) Omit section 491 (no charge under Chapter 8 of Part 3 in respect of acquisition of approved share incentive plan shares).
- (2) Sub-paragraph (1) has effect in accordance with the provision made for the repeal of Chapter 8 of Part 3.
- 27 (1) Omit section 494 (no charge on removal of restrictions applying to approved share incentive plan shares).
- (2) Sub-paragraph (1) has effect—
- (a) so far as relating to section 427, in accordance with the provision made for the substitution of Chapter 2 of Part 7, and
- (b) so far as relating to section 449, in accordance with the provision made for the substitution of Chapter 4 of Part 7.
- 28 (1) Omit section 495 (approved share incentive plan shares: value of shares in dependent subsidiary).
- (2) Sub-paragraph (1) has effect on 16th April 2003.
- 29 (1) Omit section 518 (no charge in respect of acquisition of approved SAYE share scheme option).
- (2) Sub-paragraph (1) has effect on the day appointed under paragraph 3(2).

- 30 (1) In section 519 (no charge in respect of exercise of approved SAYE share scheme option), omit subsection (4).
- (2) Sub-paragraph (1) has effect on the day appointed under paragraph 3(2).
- 31 (1) Omit section 520 (approved SAYE option schemes: no charge in respect of post-acquisition benefits).
- (2) Sub-paragraph (1) has effect in accordance with the provision made for the substitution of Chapter 4 of Part 7.
- 32 (1) Omit section 523 (no charge in respect of acquisition of approved CSOP scheme option).
- (2) Sub-paragraph (1) has effect on the day appointed under paragraph 3(2).
- 33 (1) In section 524 (no charge in respect of exercise of approved CSOP scheme option), omit subsection (4).
- (2) Sub-paragraph (1) has effect on the day appointed under paragraph 3(2).
- 34 (1) Omit section 525 (approved CSOP schemes: no charge in respect of post-acquisition benefits).
- (2) Sub-paragraph (1) has effect in accordance with the provision made for the substitution of Chapter 4 of Part 7.
- 35 (1) In section 526(4) (charge where approved CSOP scheme option granted at a discount: deductions of charge from amount chargeable under other provisions), for the words from the beginning to “deductions” substitute “Section 480(4) (gain realised on acquisition of securities pursuant to option etc) provides for a deduction”.
- (2) Sub-paragraph (1) has effect—
- (a) so far as relating to section 194, in accordance with the provision made for the repeal of Chapter 8 of Part 3, and
- (b) otherwise, on and after the day appointed under paragraph 3(2).
- 36 (1) Omit section 528 (enterprise management incentives: no charge in respect of acquisition of qualifying option).
- (2) Sub-paragraph (1) has effect on the day appointed under paragraph 3(2).
- 37 (1) In section 531(4) (enterprise management incentives: limitation of charge on exercise of qualifying option to acquire shares below market value), for the words after “which” substitute “under section 478 (amount of charge under section 476) is to be regarded as the taxable amount for the purposes of section 476 in respect of the acquisition of the shares pursuant to the option.”.
- (2) Sub-paragraph (1) has effect on and after the day appointed under paragraph 3(2).
- 38 (1) In section 532(5) (enterprise management incentives: modified tax consequences following disqualifying events), for the words after “which” substitute “under section 478 (amount of charge under section 476) is to be regarded as the taxable amount for the purposes of section 476 in respect of the acquisition of the shares pursuant to the option.”.
- (2) Sub-paragraph (1) has effect on and after the day appointed under paragraph 3(2).
- 39 (1) In section 538 (share conversions excluded for purposes of section 536), for subsection (4) substitute—

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- “(4) In this section—
- “associated company” has the same meaning as, by virtue of section 416 of ICTA, it has for the purposes of Part 11 of ICTA,
- “director” has the same meaning as in the benefits code (see section 67) but also includes a person who is to be or has been a director,
- “employee” includes a person who is to be or has been an employee, and
- “employee-controlled” has the same meaning as in Chapters 1 to 4 of this Part (see section 421H(1)).”
- (2) Sub-paragraph (1) has effect on and after the day appointed under paragraph 3(2).
- 40 (1) In section 540(1) (enterprise management incentives: notional loan provisions not to apply in relation to acquisition of shares by exercise of qualifying option), for “Chapter 8 of Part 3” substitute “Chapter 3C of this Part”.
- (2) Sub-paragraph (1) has effect in accordance with the provision made for the repeal of Chapter 8 of Part 3.
- 41 (1) In section 541 (enterprise management incentives: effect on other income tax charges), for subsections (1) and (2) substitute—
- “(1) Nothing in the EMI code affects—
- (a) the operation of Chapters 2 to 4 of this Part in relation to shares acquired under a qualifying option, or
- (b) the operation of Chapter 5 of this Part otherwise than in relation to the acquisition of shares under a qualifying option.
- (2) But in calculating the taxable amount for the purposes of section 426 (post-acquisition charge on restricted securities) in respect of shares acquired under a qualifying option, the amount of relief on the exercise of the option is to be regarded as a deductible amount for the purposes of section 428 (amount of charge).”
- (2) So far as relating to—
- (a) Chapter 9 of Part 3 (which is repealed and replaced by provisions inserted in Part 7),
- (b) any of the new Chapters substituted or inserted in Part 7 by this Schedule, and
- (c) each of the Chapters of that Part as originally enacted for which new Chapters are substituted by this Schedule,
- sub-paragraph (1) has effect in accordance with the provision made for the taking effect of the repeal, substitution or insertion.
- 42 (1) Part 2 of Schedule 1 (index of defined expressions) is amended as follows.
- (2) Omit the entries relating to—
- “acquisition (in Chapter 8 of Part 3)”,
- “the acquisition (in Chapter 8 of Part 3)”,
- “acquisition (in Chapter 9 of Part 3)”,
- “the acquisition (in Chapter 4 of Part 7)”,
- “as a director or employee, in relation to the acquisition of an interest in shares (in Chapter 2 of Part 7)”,

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“as a director or employee, in relation to the acquisition of shares or an interest in shares (in Chapter 3 of Part 7)”,
“as a director or employee, in relation to the acquisition of shares or an interest in shares (in Chapter 4 of Part 7)”,
“assign, in relation to a share option (in Chapter 5 of Part 7)”,
“associated company (in Chapter 4 of Part 7)”,
“company (in Chapter 5 of Part 7)”,
“the Contributions and Benefits Act (in Chapter 5 of Part 7)”,
“convertible, in relation to shares (in Chapter 3 of Part 7)”,
“dependent subsidiary (in Chapter 4 of Part 7)”,
“director (in Chapter 2 of Part 7)”,
“director (in Chapter 3 of Part 7)”,
“director (in Chapter 4 of Part 7)”,
“director (in Chapter 5 of Part 7)”,
“employee (in Chapter 8 of Part 3)”,
“employee (in Chapter 9 of Part 3)”,
“employee (in Chapter 2 of Part 7)”,
“the employee (in Chapter 2 of Part 7)”,
“employee (in Chapter 3 of Part 7)”,
“the employee (in Chapter 3 of Part 7)”,
“employee (in Chapter 4 of Part 7)”,
“the employee (in Chapter 4 of Part 7)”,
“employee (in Chapter 5 of Part 7)”,
“the employee (in Chapter 5 of Part 7)”,
“employee-controlled (in relation to a company) (in Chapter 4 of Part 7)”,
“the employee’s interest (in Chapter 2 of Part 7)”,
“the employer company (in Chapter 2 of Part 7)”,
“the employer company (in Chapter 3 of Part 7)”,
“the employer company (in Chapter 4 of Part 7)”,
“employment-related shares (in Chapter 9 of Part 3)”,
“the employment-related shares (in Chapter 8 of Part 3)”,
“held by outside shareholders (in Chapter 4 of Part 7)”,
“interest in shares (in Chapter 8 of Part 3)”,
“interest in shares (in Chapter 9 of Part 3)”,
“interest in shares (in Chapter 4 of Part 7)”,
“market value (in Chapter 8 of Part 3)”,
“market value (in Chapter 9 of Part 3)”,
“market value (in Chapter 2 of Part 7)”,
“only conditional (interest in shares) (in Chapter 2 of Part 7)”,
“payment for the employment-related shares (in Chapter 8 of Part 3)”,
“release, in relation to a share option (in Chapter 5 of Part 7)”,
“secondary Class 1 contributions (in Chapter 5 of Part 7)”,
“share option (in Chapter 5 of Part 7)”,
“the share option (in Chapter 5 of Part 7)”,
“shares (in Chapter 8 of Part 3)”,

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“shares (in Chapter 9 of Part 3)”,
“shares (in Chapter 2 of Part 7)”,
“the shares (in Chapter 2 of Part 7)”,
“shares (in Chapter 3 of Part 7)”,
“the shares (in Chapter 3 of Part 7)”,
“shares (in Chapter 4 of Part 7)”,
“the shares (in Chapter 4 of Part 7)”,
“shares (in Chapter 5 of Part 7)”,
“terms (in Chapter 2 of Part 7)”,
“terms (in Chapter 3 of Part 7)”, and
“value (in relation to shares) (in Chapter 4 of Part 7)”.

(3) At the appropriate places insert—

“the acquisition (in Chapters 1 to 4 of Part 7)	section 421B(8) (see also section 446Q(4))”,
“the acquisition (in Chapter 5 of Part 7)	section 471(5)”,
“associated company (in section 421H(1) and Chapters 2 to 4 of Part 7)	section 421H(2)”,
“associated person (in Chapters 1 to 4 of Part 7)	section 421C”,
“associated person (in Chapter 5 of Part 7)	section 472”,
“chargeable event (in Chapter 3B of Part 7)	section 446P(5)”,
“the Contributions and Benefits Act (in Chapter 5 of Part 7)	section 484(7)”,
“consideration (in Chapters 2 to 5 of Part 7)	sections 421(2) and 421A”,
“consideration given for the acquisition of employment-related securities (in Chapters 2 to 3A of Part 7)	section 421I”,
“convertible securities (in Chapters 2 to 3A of Part 7)	section 436”,
“the employee (in Chapters 1 to 4 of Part 7)	section 421B(8)”,
“the employee (in Chapter 5 of Part 7)	section 471(5)”,

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“employee-controlled (in Chapters 2 to 4 of Part 7)	section 421H(1)”,
“the employer (in Chapters 1 to 4 of Part 7)	section 421B(8)”,
“the employer (in Chapter 5 of Part 7)	section 471(5)”,
“the employment (in Chapters 1 to 4 of Part 7)	section 421B(8)”,
“the employment (in Chapter 5 of Part 7)	section 471(5)”,
“employment-related securities (in Chapters 1 to 5 of Part 7)	section 421B(8) (see also section 484(4))”,
“employment-related securities option (in Chapter 5 of Part 7)	section 471(5)”,
“interest, in relation to securities (or shares) (in Chapters 1 to 5 of Part 7)	section 420(8)”,
“market value (in Chapters 1 to 5 of Part 7)	section 421(1)”,
“non-commercial increase (in Chapter 3B of Part 7)	section 446K(4)”,
“non-commercial reduction (in Chapter 3B of Part 7)	section 446K(4)”,
“the notional loan (in Chapter 3C of Part 7)	section 446S(1)”,
“recognised stock exchange	section 841 of ICTA”,
“relevant period (in Chapter 3B of Part 7)	section 446O”,
“restricted securities and restricted interest in securities (in Chapters 2, 3A and 3B of Part 7)	sections 423 and 424”,
“restriction (in Chapters 2, 3A and 3B of Part 7)	section 432(8)”,

Status: This is the original version (as it was originally enacted).

“secondary Class 1 contributions (in Chapter 5 of Part 7) section 484(7)”,

“securities (in Chapters 1 to 5 of Part 7) section 420”,

“securities option (in Chapters 1 to 5 of Part 7) section 420(8)”,

“shares (in Chapters 1 to 5 of Part 7) section 420(8)”,

“valuation date (in Chapter 3B of Part 7) section 446O”, and

“variation, in relation to a restriction (in Chapter 2 of Part 7) section 427(4)”.

- (4) So far as relating to—
- (a) Chapters 8 and 9 of Part 3 (which are repealed and replaced by provisions inserted in Part 7),
 - (b) each of the new Chapters substituted or inserted in Part 7, and
 - (c) each of the Chapters of that Part as originally enacted for which new provisions are substituted,
- sub-paragraphs (1) to (3) have effect in accordance with the provision made for the taking effect of the repeal, substitution or insertion.
- 43 (1) In paragraph 35 of Schedule 2 (approved share incentive plans: maximum annual award), for sub-paragraphs (3) and (4) substitute—
- “(3) For the purposes of this paragraph the market value of restricted shares is to be determined as if they were not.
- (4) Shares are “restricted shares” if there is any contract, agreement, arrangement or condition which makes provision to which any of subsections (2) to (4) of section 423 (restricted securities) would apply if the references in those subsections to the employment-related securities were to the shares.”.
- (2) Sub-paragraph (1) has effect in accordance with the provision made for the substitution of Chapter 2 of Part 7.
- 44 (1) In paragraph 42(3) of Schedule 3 (approved SAYE option schemes: withdrawal of approval), for paragraph (b) substitute—
- “(b) section 421G(b) (exemption from Chapters 2 to 4 of Part 7),”.
- (2) Sub-paragraph (1) has effect in accordance with the provision made for the substitution of Chapter 4 of Part 7.
- 45 (1) Schedule 5 (enterprise management incentives) is amended as follows.
- (2) In paragraph 5, for sub-paragraphs (7) and (8) substitute—

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“(7) For the purposes of this paragraph the market value of restricted shares is to be determined as if they were not.

(8) Shares are “restricted shares” if there is any contract, agreement, arrangement or condition which makes provision to which any of subsections (2) to (4) of section 423 (restricted securities) would apply if the references in those subsections to the employment-related securities were to the shares.”.

(3) In paragraph 37, for sub-paragraphs (4) to (6) substitute—

“(4) Where the shares that may be acquired by the employee are restricted shares, the agreement must contain details of the restrictions.

(5) For the purposes of sub-paragraph (4)—

- (a) shares are “restricted shares” if there is any contract, agreement, arrangement or condition which makes provision to which any of subsections (2) to (4) of section 423 (restricted securities) would apply if the references in those subsections to the employment-related securities were to the shares, and
- (b) “restrictions” means that provision.”.

(4) Sub-paragraphs (1) to (3) have effect in accordance with the provision made for the substitution of Chapter 2 of Part 7.

46 (1) Schedule 7 (transitionals and savings) is amended as follows.

(2) Omit paragraphs 30 and 31.

(3) In the heading of Part 6, for “share-related” substitute “related to securities”.

(4) In the heading of Part 7, for “share-related income” substitute “income related to securities”.

(5) Before paragraph 44 insert—

“Pre-6th April 2003 acquisitions

43A (1) This paragraph relates to the operation of section 421E (exclusions from Chapters 2 to 4 of Part 7: residence) in relation to an acquisition made before 6th April 2003.

(2) Section 421E(1) has effect with the substitution of “the employee was not chargeable under Case I of Schedule E in respect of the employment” for the words from “the earnings”.

(3) Section 421E(2) has effect with the substitution of “the emoluments of the employment did not fall to be charged to income tax under Schedule E” for the words from “the earnings”.”.

(6) In paragraph 44, after “Part 7” insert “, as originally enacted,”.

(7) In paragraph 45(1), at end insert “, as originally enacted.”.

(8) In paragraph 46(1), after “disposal” insert “, as originally enacted,”.

(9) Omit paragraphs 47 and 48.

Status: This is the original version (as it was originally enacted).

- (10) In paragraph 49, for “shares” substitute “securities”.
- (11) Omit paragraphs 50 to 52.
- (12) Omit paragraph 53.
- (13) In paragraph 54, after “Part 7” insert “, both as originally enacted and as substituted by the Finance Act 2003,”.
- (14) In paragraph 55—
 - (a) after “Part 7” insert “, as originally enacted,” and
 - (b) omit sub-paragraph (2)(a).
- (15) In paragraph 56, after “section 449” insert “, as originally enacted,”.
- (16) In paragraph 58(1), at end insert “, as originally enacted.”
- (17) Omit paragraph 59.
- (18) Omit paragraphs 60 and 61.
- (19) After paragraph 61 insert—

“Securities disposed of for more than market value

61A Chapter 3D of Part 7 does not apply in relation to securities, or an interest in securities, acquired on or before 6th April 1976.”.

- (20) Omit paragraph 62.
- (21) For paragraph 63 substitute—
 - “63 (1) This paragraph relates to the operation of section 474 (exclusions from Chapter 5 of Part 7: residence) in relation to an acquisition made before 6th April 2003.
 - (2) Section 474(1) has effect with the substitution of “the employee was not chargeable under Case I of Schedule E in respect of the employment” for the words from “the earnings”.”.
- (22) In paragraph 64—
 - (a) for “share” (in both places) substitute “securities”,
 - (b) for “obtained” substitute “acquired”, and
 - (c) for “receipt” substitute “acquisition”.
- (23) In paragraph 65—
 - (a) in sub-paragraph (1), for “479 (amount of gain realised by exercising option) in relation to a share option obtained” substitute “478 in relation to an event that is a chargeable event by virtue of section 477(3)(a) or (b) (acquisition of securities pursuant to an option and assignment and release of option) in the case of a share option acquired”, and
 - (b) in sub-paragraph (2), for “479(1)” substitute “478(1)” and for “cost” substitute “amount”.
- (24) Omit paragraph 66.
- (25) Omit paragraph 67.

(26) In this paragraph—

- (a) sub-paragraphs (2) and (19) have effect in relation to securities, and interests in securities, disposed of on or after 16th April 2003,
- (b) sub-paragraphs (5) and (13) to (17) have effect on and after 16th April 2003,
- (c) sub-paragraphs (6) to (8), (10), (11), (20), (23) and (24) have effect on the day appointed under paragraph 3(2), and
- (d) sub-paragraphs (21) and (22) have effect in accordance with the provision made for the substitution of Chapter 5 of Part 7.

Consequential amendments of other enactments

47 (1) In section 98 of the Taxes Management Act 1970 (c. 9) (penalties for failure to furnish information etc)—

- (a) in the first column of the Table, at the appropriate place insert “Section 421J(4) of ITEPA 2003.”, and
- (b) in the second column of the Table, for the entries relating to sections 432, 433, 445, 465, 466 and 486 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) substitute “Section 421J(3) of ITEPA 2003.”.

(2) Sub-paragraph (1) has effect in accordance with the provision made for the substitution of Chapter 1 of Part 7 of the Income Tax (Earnings and Pensions) Act 2003.

48 (1) In section 4(4)(a) of—

- (a) the Social Security Contributions and Benefits Act 1992 (c. 4) (payments treated as earnings), and
- (b) the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) (corresponding provision for Northern Ireland),

for the words after “479” substitute “of ITEPA 2003 in respect of which an amount counts as employment income of the earner under section 476 of that Act (charge on acquisition of securities pursuant to option etc), reduced by any amounts deducted under section 480(1) to (6) of that Act in arriving at the amount counting as such employment income;”.

(2) Sub-paragraph (1) has effect in accordance with the provision made for the substitution of Chapter 5 of Part 7 of the Income Tax (Earnings and Pensions) Act 2003.

49 The Taxation of Chargeable Gains Act 1992 (c. 12) is amended as follows.

50 (1) After section 119 insert—

“119A Increase in expenditure by reference to tax charged in relation to employment-related securities

(1) This section applies to a disposal of an asset consisting of employment-related securities if the disposal—

- (a) is an event giving rise to a relevant income tax charge, or
- (b) is the first disposal after an event, other than a disposal, giving rise to a relevant income tax charge.

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- (2) Section 38(1)(a) applies as if the relevant amount had formed part of the consideration given by the person making the disposal for his acquisition of the employment-related securities.
- (3) For the purposes of this section an event gives rise to a relevant income tax charge if it results in an amount counting as employment income—
- (a) under section 426 of ITEPA 2003 (restricted securities),
 - (b) under section 438 of ITEPA 2003 by virtue of section 439(3)(a) of that Act (conversion of convertible securities),
 - (c) under section 446U of ITEPA 2003 (securities acquired for less than market value: discharge of notional loan), or
 - (d) under section 476 of ITEPA 2003 by virtue of section 477(3)(a) of that Act (acquisition of securities pursuant to employment-related securities option),
- in respect of the employment-related securities.
- (4) For the purposes of this section “the relevant amount” is the aggregate of the amounts counting as employment income as mentioned in subsection (3) above by reason of events occurring—
- (a) not later than the disposal, and
 - (b) where this section has applied to an earlier disposal of the employment-related securities, after the last disposal to which this section applied.
- (5) But where the relevant amount consists of or includes an amount counting as employment income under section 476 of ITEPA 2003, it is to be increased by the aggregate of any amounts deducted under section 480(5)(a) or (b), 481 or 482 of that Act in arriving at the amount of that employment income.
- (6) Where securities or interests in securities cease to be employment-related securities—
- (a) by reason of subsection (6) of section 421B of ITEPA 2003 in circumstances in which, immediately before the employee’s death, the employment-related securities are held otherwise than by the employee, or
 - (b) by reason of subsection (7) of that section,
- they are to be regarded for the purposes of this section as remaining employment-related securities until the next occasion on which they are disposed of.
- (7) In this section—
- “employment-related securities”, and
“employee”, in relation to employment-related securities,
- have the same meaning as in Chapters 1 to 4 of Part 7 of ITEPA 2003.
- (8) References in this section to ITEPA 2003 are to that Act as amended by Schedule 22 to the Finance Act 2003.”.
- (2) Sub-paragraph (1) has effect in relation to disposals on or after 16th April 2003.
- 51 In section 120 (increase in expenditure by reference to tax charged in relation to shares etc), after subsection (8) insert—

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“(9) References in this section to ITEPA 2003 are to that Act as originally enacted.”.

52 (1) After section 149A insert—

“149AA Restricted and convertible employment-related securities

(1) Where an individual has acquired an asset consisting of employment-related securities which are—

- (a) restricted securities or a restricted interest in securities, or
- (b) convertible securities or an interest in convertible securities,

the consideration for the acquisition shall (subject to section 119A) be taken to be equal to the aggregate of the actual amount or value given for the employment-related securities and any amount that constituted earnings under Chapter 1 of Part 3 of ITEPA 2003 (earnings) in respect of the acquisition.

(2) Subsection (1) above applies only to the individual making the acquisition and, accordingly, is to be disregarded in calculating the consideration received by the person from whom the employment-related securities are acquired.

(3) This section has effect in relation to acquisitions on or after the day appointed under paragraph 3(2) of Schedule 22 to the Finance Act 2003.

(4) In this section “employment-related securities” has the same meaning as in Chapters 1 to 4 of Part 7 of ITEPA 2003 (as substituted by Schedule 22 to the Finance Act 2003).

(5) In this section—

“restricted interest in securities”, and
“restricted securities”,

have the same meaning as in Chapter 2 of that Part of ITEPA 2003 (as so substituted).

(6) In this section “convertible securities” has the same meaning as in Chapter 3 of that Part of ITEPA 2003 (as so substituted).”.

53 In section 149B (employee incentive schemes: conditional interests in shares), after subsection (4) insert—

“(5) This section does not apply to acquisitions on or after the day appointed under paragraph 3(2) of Schedule 22 to the Finance Act 2003.

(6) References in this section to ITEPA 2003 are to that Act as originally enacted.”.

54 (1) In section 288 (interpretation), after subsection (1) insert—

“(1A) If any employment-related securities option would not otherwise be regarded as an option for the purposes of this Act, it shall be so regarded; and the acquisition of securities by an associated person pursuant to an employment-related securities option is to be treated for the purposes of this Act as the exercise of the option.

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Expressions used in this subsection and Chapter 5 of Part 7 of ITEPA 2003 have the same meaning in this subsection as in that Chapter.”.

- (2) Sub-paragraph (1) has effect in accordance with the provision made for the substitution of Chapter 5 of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1).
- 55 (1) The Social Security Contributions (Share Options) Act 2001 (c. 20) is amended as follows.
- (2) The amendments of that Act have effect on and after the day appointed under paragraph 3(2).
- 56 In section 2(3)(b) (effect of notice under section 1), insert at the end “(less any deductible amounts under section 480(1) to (6) of that Act).”.
- 57 (1) Section 3 (special provision for roll-overs) is amended as follows.
- (2) In subsection (4)—
- (a) in paragraph (a), for “section 485(1) to (4)” substitute “section 483(1) to (4)”, and
- (b) insert at the end of paragraph (b)(i) “(less any deductible amounts under section 480(1) to (6) of that Act).”.
- (3) In subsection (6), for “485(1) to (3)” substitute “483(1) to (3)”.
- (4) In subsection (11)(a), insert at the end “(less any deductible amounts under section 480(1) to (6)).”.
- 58 In section 5(2)(c) (interpretation), for “483(1)” substitute “477(6)”.
- 59 Schedule 23 to this Act (corporation tax relief for employee share acquisitions) is amended as follows.
- 60 (1) Paragraph 1 is amended as follows.
- (2) In sub-paragraph (1)(b), for “in exercise of” substitute “pursuant to”.
- (3) For sub-paragraph (2) substitute—
- “(2) Part 4 of this Schedule makes further provision for cases where the shares acquired are restricted shares.
- (2A) Part 4A of this Schedule makes further provision for cases where the shares acquired are convertible shares.”.
- (4) Sub-paragraph (2) has effect on and after the day appointed under paragraph 3(2).
- (5) Sub-paragraph (3) has effect in accordance with the provision made for the substitution of Part 4 of, and the insertion of Part 4A in, Schedule 23.
- 61 (1) For paragraph 5(2) substitute—
- “(2) Where the shares acquired are restricted shares, the provisions of this Part have effect subject to the provisions of Part 4 of this Schedule.
- (3) Where the shares acquired are convertible shares, the provisions of this Part have effect subject to the provisions of Part 4A of this Schedule.”.

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- (2) Sub-paragraph (1) has effect in accordance with the provision made for the substitution of Part 4 of, and the insertion of Part 4A in, Schedule 23.
- 62 (1) For paragraph 11(2) substitute—
- “(2) Where the shares acquired pursuant to the option are restricted shares, the provisions of this Part have effect subject to the provisions of Part 4 of this Schedule.
- (3) Where the shares acquired pursuant to the option are convertible shares, the provisions of this Part have effect subject to the provisions of Part 4A of this Schedule.”.
- (2) Sub-paragraph (1) has effect in accordance with the provision made for the substitution of Part 4 of, and the insertion of Part 4A in, Schedule 23.
- 63 (1) In paragraph 12, for “in exercise of” substitute “pursuant to”.
- (2) Sub-paragraph (1) has effect on and after the day appointed under paragraph 3(2).
- 64 (1) Paragraph 13 is amended as follows.
- (2) In sub-paragraph (2)(b), for “in exercise of” (in both places) substitute “pursuant to”.
- (3) For sub-paragraph (2)(c) substitute—
- “(c) in determining the amount of relief—
- (i) any consideration given in respect of the grant of the new option is treated as if it had been given in respect of the grant of the old option, and
- (ii) any consideration given in respect of the acquisition of shares pursuant to the new option is treated as if it had been given in respect of the acquisition of shares pursuant to the old option.”.
- (4) In sub-paragraph (3)(b), for “its exercise” substitute “the shares acquired pursuant to it”.
- (5) This paragraph has effect on and after the day appointed under paragraph 3(2).
- 65 (1) For paragraph 14 substitute—

“Income tax position of the employee

- 14 (1) It must be the case that the acquisition of shares pursuant to the option—
- (a) is a chargeable event in relation to the employee for the purposes of section 476 of the Income Tax (Earnings and Pensions) Act 2003 (whether or not an amount counts as employment income by virtue of that event), or
- (b) would be such a chargeable event in relation to the employee if the conditions specified in sub-paragraph (2) were met.
- (2) The conditions mentioned in sub-paragraph (1)(b) are—
- (a) that the employee was resident and ordinarily resident in the United Kingdom at all material times, and

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- (b) that the duties of the employment by reason of which the option was granted were performed in the United Kingdom at all material times.”.
- (2) Sub-paragraph (1) has effect on and after the day appointed under paragraph 3(2).
- 66 (1) Paragraph 15 is amended as follows.
 - (2) In sub-paragraph (1)—
 - (a) for “the option is exercised” substitute “they are acquired pursuant to the option”, and
 - (b) for “or exercise of” substitute “of the option or the acquisition of the shares pursuant to”.
 - (3) In sub-paragraph (3), for “or exercise of” substitute “of the option or the acquisition of the shares pursuant to”.
 - (4) This paragraph has effect on and after the day appointed under paragraph 3(2).
- 67 (1) In paragraph 17(1), for “in exercise of” substitute “pursuant to”.
- (2) Sub-paragraph (1) has effect on and after the day appointed under paragraph 3(2).
- 68 (1) For Part 4 substitute—

“PART 4

PROVISIONS APPLYING IN CASE OF RESTRICTED SHARES

Introduction

- 18 In the case of—
 - (a) an award of restricted shares, or
 - (b) the acquisition pursuant to an option of restricted shares,
 the provisions of Part 2 or 3 have effect subject to the provisions of this Part of this Schedule.

Meaning of “restricted shares”

- 19 Shares are “restricted shares” for the purposes of this Schedule if they are restricted securities, or a restricted interest in securities, for the purposes of Chapter 2 of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (see sections 423 and 424 of that Act).

Income tax position of employee in case of restricted shares

- 20 (1) Where the recipient acquires restricted shares, this paragraph applies in place of paragraph 7 (income tax position of the employee).
- (2) It must be the case that the employee —
 - (a) either—
 - (i) is subject to a charge to income tax under Chapter 1 of Part 3 of the Income Tax (Earnings and Pensions) Act 2003 in respect of the award, or

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- (ii) is not subject to such a charge but will be subject to a charge to income tax under the Income Tax (Earnings and Pensions) Act 2003 by virtue of section 426 of that Act on the occurrence of an event in relation to the shares that is a chargeable event for the purposes of that section, or
 - (b) would be within paragraph (a) if the conditions specified in sub-paragraph (4) were met.
- (3) Where but for the death of the employee sub-paragraph (2)(a)(ii) would apply in relation to restricted shares acquired under an award of shares, it is to be treated as applying in relation to the restricted shares.
- (4) The conditions mentioned in sub-paragraph (2)(b) are—
- (a) that the employee was resident and ordinarily resident in the United Kingdom at all material times, and
 - (b) that the duties of the employment by reason of which the award was made or the option was granted were performed in the United Kingdom at all material times.

Amount of relief in case of restricted shares

- 21 (1) Where the recipient acquires restricted shares, this paragraph applies in place of paragraph 8 or 15 (amount of relief).
- (2) Relief is available—
- (a) on the award of the shares or, where they are acquired pursuant to an option, on that acquisition,
 - (b) on any event that is a chargeable event in relation to the shares for the purposes of section 426 of the Income Tax (Earnings and Pensions) Act 2003,
 - (c) on the death of the employee.
- (3) The amount of the relief on the award of the shares is equal to the amount that constitutes earnings from the employee's employment under Chapter 1 of Part 3 of the Income Tax (Earnings and Pensions) Act 2003 in respect of the award.
- (4) The amount of the relief on the acquisition of the shares pursuant to the option is equal to the amount that counts as employment income of the employee under section 476 of the Income Tax (Earnings and Pensions) Act 2003 in respect of the acquisition, increased by any amounts deducted under sections 481 and 482 of that Act.
- (5) Where restricted shares acquired as mentioned in sub-paragraph (3) or (4) are also convertible shares, the total amount of the relief in respect of the acquisition is whichever is the greater of—
- (a) in the case of an award of shares, the amounts mentioned in sub-paragraph (3) and paragraph 22C(3), and
 - (b) in the case of an acquisition of shares pursuant to an option, the amounts mentioned in sub-paragraph (4) and paragraph 22C(4).
- (6) The amount of the relief on an event that is a chargeable event for the purposes of section 426 of the Income Tax (Earnings and Pensions) Act

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2003 is equal to the amount that counts as employment income of the employee under that section in respect of that event.

- (7) The amount of the relief on the death of the employee is equal to the amount that (disregarding section 428(6) and (9) of the Income Tax (Earnings and Pensions) Act 2003) would count as employment income of the employee if there were a chargeable event within section 427(3) (c) of that Act immediately before the restricted shares ceased to be employment-related securities by virtue of the employee's death.
- (8) Section 446E(3) of the Income Tax (Earnings and Pensions) Act 2003 is to be disregarded in determining the amounts of the reliefs given by sub-paragraphs (6) and (7).
- (9) The amount of any non-commercial increase in the market value of the restricted shares since the time of the acquisition is to be disregarded for the purpose of determining the amounts of the reliefs given by sub-paragraphs (6) and (7).

“Non-commercial increase” has the same meaning as in Chapter 3B of Part 7 of the Income Tax (Earnings and Pensions) Act 2003.
- (10) If the award or grant was made partly for the purposes of a business meeting the requirements of paragraph 3 (business must be within the charge to corporation tax) and partly for the purposes of a business in relation to which those requirements are not met, the amount of the relief shall be reduced to such extent as is just and reasonable.
- (11) Where the employee—
 - (a) is not subject to a charge to income tax mentioned in sub-paragraph (3), (4) or (6), or would not be subject to the charge to income tax mentioned in sub-paragraph (7), but
 - (b) would be subject to such a charge if the conditions specified in paragraph 20(4) were met,

the amount of the relief is to be taken to be the amount that would be the amount of the relief if those conditions were met.

Timing of relief in case of restricted shares

- 22 (1) Where the recipient acquires restricted shares, this paragraph applies in place of paragraph 10 or 17 (timing of relief).
- (2) The relief mentioned in paragraph 21(3) is given for the accounting period in which the recipient acquires the restricted shares pursuant to the award.
- (3) The relief mentioned in paragraph 21(4) is given for the accounting period in which the recipient acquires the restricted shares pursuant to the option.
- (4) The time when the shares are acquired is when the recipient acquires a beneficial interest in the shares and not, if different, the time the shares are conveyed or transferred.

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- (5) The relief mentioned in paragraph 21(6) is given for the accounting period in which the chargeable event takes place.
 - (6) The relief mentioned in paragraph 21(7) is given for the accounting period in which the employee dies.”.
- (2) Sub-paragraph (1) has effect on and after the day appointed under paragraph 3(2) but does not affect any restricted shares acquired before 16th April 2003.
- 69 (1) After Part 4 insert—

“PART 4A

PROVISIONS APPLYING IN CASE OF CONVERTIBLE SHARES

Introduction

- 22A In the case of—
- (a) an award of convertible shares, or
 - (b) the acquisition pursuant to an option of convertible shares,
- the provisions of Part 2 or 3 have effect subject to the provisions of this Part of this Schedule.

Meaning of “convertible shares”

- 22B (1) Shares are “convertible shares” for the purposes of this Schedule if they are convertible securities, or an interest in convertible securities.
- (2) But convertible securities which are not shares, or an interest in convertible securities which are not shares, are to be taken to be convertible shares for the purposes of this Schedule as it applies in relation to the reliefs given by paragraph 22C(6) and (7).
- (3) In this paragraph “convertible securities” has the same meaning as in Chapter 3 of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (see section 436 of that Act).

Amount of relief in case of convertible shares

- 22C (1) Where the recipient acquires convertible shares, this paragraph applies in place of paragraph 8 or 15 (amount of relief).
- (2) Relief is available—
- (a) on the award of the shares or, where they are acquired pursuant to an option, on that acquisition,
 - (b) on any event that is a chargeable event in relation to the convertible shares,
 - (c) on the death of the employee.
- (3) The amount of the relief on the award of the shares is equal to the amount that constitutes earnings from the employee’s employment under Chapter 1 of Part 3 of the Income Tax (Earnings and Pensions) Act 2003 (as modified by section 437 of that Act) in respect of the award.

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- (4) The amount of the relief on the acquisition of the shares pursuant to an option is equal to the amount that counts as employment income of the employee under section 476 of the Income Tax (Earnings and Pensions) Act 2003 (as modified by section 437 of that Act) in respect of the acquisition, increased by any amounts deducted under sections 481 and 482 of that Act.
- (5) Where convertible shares acquired as mentioned in sub-paragraph (3) or (4) are also restricted shares, the total amount of the relief in respect of the acquisition is whichever is the greater of—
- (a) in the case of an award of shares, the amounts mentioned in sub-paragraph (3) and paragraph 21(3), and
 - (b) in the case of an acquisition of shares pursuant to an option, the amounts mentioned in sub-paragraph (4) and paragraph 21(4).
- (6) The amount of the relief on an event that is a chargeable event in relation to the convertible shares is equal to the amount that counts as employment income of the employee in respect of that event.
- (7) The amount of the relief on the death of the employee is equal to the amount that would have counted as employment income of the employee in relation to the first event following the employee's death which would have been a chargeable event were the employee still alive.
- (8) Sections 446G and 446H of the Income Tax (Earnings and Pensions) Act 2003 are to be disregarded in determining the amounts of the reliefs given by sub-paragraphs (6) and (7).
- (9) If the award or grant was made partly for the purposes of a business meeting the requirements of paragraph 3 (business must be within the charge to corporation tax) and partly for the purposes of a business in relation to which those requirements are not met, the amount of the relief shall be reduced to such extent as is just and reasonable.
- (10) Where the employee—
- (a) is not subject to a charge to income tax mentioned in sub-paragraph (3), (4) or (6), or would not be subject to the charge to income tax mentioned in sub-paragraph (7), but
 - (b) would be subject to such a charge if the conditions specified in paragraph 7(2) or 14(2) were met,
- the amount of the relief is to be taken to be the amount that would be the amount of the relief if those conditions were met.
- (11) In this paragraph and paragraph 22D “chargeable event” means an event that is a chargeable event in relation to the convertible shares within section 439(3)(a) of the Income Tax (Employment and Pensions) Act 2003; but a conversion of the convertible shares into anything other than shares which—
- (a) meet the requirements of paragraph 4, and
 - (b) would meet the requirements of paragraph 6 if they had been acquired by an award of shares,
- is not a chargeable event for the purposes of this paragraph.

Status: This is the original version (as it was originally enacted).

Timing of relief in case of convertible shares

- 22D (1) Where the recipient acquires convertible shares, this paragraph applies in place of paragraph 10 or 17 (timing of relief).
- (2) The relief mentioned in paragraph 22C(3) is given for the accounting period in which the recipient acquires the convertible shares under the award.
- (3) The relief mentioned in paragraph 22C(4) is given for the accounting period in which the recipient acquires the convertible shares pursuant to the option.
- (4) The time when shares are acquired is when the recipient acquires a beneficial interest in the shares and not, if different, the time the shares are conveyed or transferred.
- (5) The relief mentioned in paragraph 22C(6) is given for the accounting period in which the chargeable event takes place.
- (6) The relief mentioned in paragraph 22C(7) is given for the accounting period in which the event takes place which would have been a chargeable event but for the death of the employee.”.
- (2) Sub-paragraph (1) has effect on and after the day appointed under paragraph 3(2) (so that, apart from paragraph 22C(2)(a) and (3) to (5) and paragraph 22D(2) to (4), the provisions of Part 4A of Schedule 23 as inserted by that sub-paragraph apply on and after that day in relation to convertible shares irrespective of the time of the acquisition).
- 70 (1) In paragraph 23(2)(a), for “or 22” substitute “, 22 or 22D”.
- (2) Sub-paragraph (1) has effect on and after the day appointed under paragraph 3(2).
- 71 (1) In paragraph 26 before paragraph (a) insert—
“(za) “employment” includes a former or prospective employment,”.
- (2) Sub-paragraph (1) has effect on and after 16th April 2003.
- 72 (1) For paragraph 27 substitute—

“Acquisition of shares pursuant to option after death of employee or recipient

- 27 (1) Where after the employee’s death shares are acquired by the recipient pursuant to an option obtained by reason of the employee’s employment, the condition in paragraph 14 (income tax position of the employee) is treated as met if it would be met were the employee still alive.
- (2) Where after the death of the recipient shares are acquired pursuant to an option obtained by reason of the employee’s employment, paragraph 1(1)(b) and Parts 3, 4 and 4A of this Schedule, and sub-paragraph (1) above, apply as if the recipient were still alive and the shares were acquired by him.”.
- (2) Sub-paragraph (1) has effect on and after the day appointed under paragraph 3(2).
- 73 (1) Paragraph 31 is amended as follows.

Status: This is the original version (as it was originally enacted).

(2) Omit the entry relating to “subject to forfeiture”.

(3) At the appropriate places insert—

“restricted shares	paragraph 19,”
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“convertible shares	paragraph 22B”.
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(4) This paragraph has effect in accordance with the provision made for the substitution of Part 4 of, and the insertion of Part 4A in, Schedule 23.