



# Finance Act 2004

## 2004 CHAPTER 12

### PART 3

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER 4

#### PERSONAL TAXATION

#### *Taxable benefits*

#### **78 Childcare and childcare vouchers**

- (1) Schedule 13 to this Act contains amendments of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) relating to childcare and childcare vouchers.
- (2) The amendments have effect for the year 2005-06 and subsequent years of assessment.

#### **79 Exemption for loaned computer equipment**

- (1) In Chapter 11 of Part 4 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (employment income: miscellaneous exemptions), section 320 (limited exemption for computer equipment) is amended as follows.
- (2) For subsection (1) substitute—
  - “(1) If conditions A and B are met in respect of the provision of computer equipment—
    - (a) no liability to income tax arises by virtue of section 62 (general definition of earnings), and
    - (b) liability to income tax by virtue of Chapter 10 of Part 3 (taxable benefits: residual liability to charge) arises only in respect of so much

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of the aggregate cash equivalent of the benefit in the tax year as exceeds £500.”.

- (3) Omit subsections (4) and (5).
- (4) This section has effect for the year 2004-05 and subsequent years of assessment.

## **80 Vans**

- (1) Schedule 14 to this Act contains amendments of the Income Tax (Earnings and Pensions) Act 2003 relating to vans.
- (2) The amendments have effect for the year 2005-06 and subsequent years of assessment.

## **81 Emergency vehicles**

- (1) In the Income Tax (Earnings and Pensions) Act 2003, after section 248 insert—

### **“248A Emergency vehicles**

- (1) This section applies where—
  - (a) an emergency vehicle is made available to a person employed in an emergency service for the person’s private use,
  - (b) the terms on which it is made available prohibit its private use otherwise than when the person is on call or engaged in on-call commuting, and
  - (c) the person does not make private use of it otherwise than in such circumstances.
- (2) No liability to income tax arises by virtue of Chapter 6 or 10 of Part 3 (taxable benefits: cars, vans etc. and residual liability to charge) in respect of the benefit.
- (3) “Emergency vehicle” means a vehicle which is used to respond to emergencies and which either—
  - (a) has fixed to it a lamp designed to emit a flashing light for use in emergencies, or
  - (b) would have such a lamp fixed to it but for the fact that (if it did) a special threat to the personal physical security of those using it would arise by reason of it being apparent that they were employed in an emergency service.
- (4) The following are “employed in an emergency service”—
  - (a) constables and other persons employed for police purposes,
  - (b) persons employed for the purposes of a fire, or fire and rescue, service, and
  - (c) persons employed in the provision of ambulance or paramedic services.
- (5) The Treasury may by order amend subsection (4).
- (6) “Private use”, in relation to a person, means any use other than for the person’s business travel; and “business travel” has the same meaning as in Chapter 6 of Part 3 (see section 171(1)).

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- (7) A person to whom an emergency vehicle is made available is on call when liable, as part of normal duties, to be called on to use the emergency vehicle to respond to emergencies.
  - (8) A person to whom an emergency vehicle is made available is engaged in on-call commuting when the person—
    - (a) is using it for ordinary commuting or for travel between two places that is for practical purposes substantially ordinary commuting, and
    - (b) is required to do so in order that it is available for use by the person, as part of normal duties, for responding to emergencies.”.
- (2) In section 236(2)(c) of that Act (mileage allowance and passenger payments: meaning of “company vehicle”), after “vans)” insert “and section 248A (emergency vehicles)”.
- (3) This section has effect for the year 2004-05 and subsequent years of assessment.

## **82 European travel expenses of MPs and other representatives**

- (1) The Income Tax (Earnings and Pensions) Act 2003 (c. 1) is amended as follows.
- (2) In section 294 (EU travel expenses of MPs and other representatives) in subsection (1) (exemption from income tax in respect of sums paid to Members of the House of Commons and other representatives in respect of EU travel expenses) for “EU” (in both places) substitute “European”.
- (3) In that section, for subsections (2) to (4) substitute—
  - “(2) “European travel expenses” means the cost of, and any additional expenses incurred in, travelling between the United Kingdom and a relevant European location.
  - (3) “Relevant European location” means—
    - (a) a European Union institution or agency, or
    - (b) the national parliament of—
      - (i) another member State,
      - (ii) a candidate or applicant country, or
      - (iii) a member State of the European Free Trade Association.
  - (4) The Treasury may by order amend subsection (3) by—
    - (a) adding a European location,
    - (b) removing a European location, or
    - (c) varying the description of a European location.”.
- (4) In the heading of that section, “EU” accordingly becomes “European”.
- (5) This section has effect in relation to sums paid in respect of costs or expenses incurred on or after 6th April 2004.

### *Gift aid*

## **83 Giving through the self-assessment return**

- (1) This section applies where—

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- (a) as a result of the making by an individual of a personal return for a year of assessment, a tax repayment in respect of one or more years of assessment falls to be made to him,
  - (b) the personal return contains a single direction, in the form specified in the return, requiring—
    - (i) the whole of the tax repayment, or
    - (ii) so much of the tax repayment as does not exceed a specified amount, to be paid on his behalf as a gift to a single specified charity,
  - (c) the direction also requires the gift to be treated as a qualifying donation for the purposes of section 25 of the Finance Act 1990 (c. 29) (gift aid), and
  - (d) the gift satisfies the requirements of subsection (2) of that section.
- (2) The gift is to be treated as a qualifying donation for the purposes of that section made by the individual at the time the payment is received by the charity.
- (3) Section 98 of the Finance Act 2002 (c. 23) (gift aid: election to be treated as if gift made in previous tax year) accordingly does not apply to the gift.
- (4) The charity is to be treated as having made a claim for any exemption which may be available under section 505(1)(c)(ii) of the Taxes Act 1988 (charities: exemption from tax under Case III of Schedule D) as a result of the charity's receipt of the gift (see section 25(10) of the Finance Act 1990).
- (5) In this section—
- “charity” means a charity within the meaning of section 25 of the Finance Act 1990 (see subsection (12)(a) of that section) which, at the time the personal return in question is made, is included (at the request of the charity) in a list maintained for the purposes of this section by the Board;
  - “personal return” means a return under section 8 of the Taxes Management Act 1970 (c. 9) (personal return);
  - “tax repayment” means a repayment (after any set-off that falls to be made against the individual's liabilities) of either or both of—
    - (a) income tax or amounts paid on account of income tax;
    - (b) capital gains tax;
 and, for the purposes of subsection (1)(b), includes any repayment supplement (within the meaning of section 824 of the Taxes Act 1988 or section 283 of the Taxation of Chargeable Gains Act 1992 (c. 12)).
- (6) In section 25 of the Finance Act 1990 (c. 29) (gift aid) after subsection (12) insert—
- “(13) This section is to be read with—
- (a) section 98 of the Finance Act 2002 (gift aid: election to be treated as if gift made in previous tax year);
  - (b) section 83 of the Finance Act 2004 (gift aid: giving through the self-assessment return).”.
- (7) This section has effect in relation to personal returns for the year 2003-04 and subsequent years of assessment.

*Gifts with a reservation*

**84 Charge to income tax by reference to enjoyment of property previously owned**

- (1) Schedule 15 (which contains provisions imposing a charge to income tax by reference to benefits received in certain circumstances by a former owner of property) has effect.
- (2) That Schedule has effect for the year 2005-06 and subsequent years of assessment.

*Employment-related securities and options*

**85 Relief where national insurance contributions met by employee**

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

**86 Shares in employee-controlled companies and unconnected companies**

- (1) Each of the provisions of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (employment income: securities) specified in subsection (2) (exception from charges for certain company shares) is amended in accordance with subsections (3) to (5).
- (2) The provisions are—
  - (a) section 429 (restricted securities),
  - (b) section 443 (convertible securities),
  - (c) section 446R (securities acquired for less than market value), and
  - (d) section 449 (post-acquisition benefits from securities).
- (3) In subsection (1) of each of those sections, after paragraph (b) (but before the word “and” where that word features at the end) insert—

“(ba) subsection (1A) is satisfied.”.
- (4) After subsection (1) of each of those sections insert—

“(1A) This subsection is satisfied if the avoidance of tax or national insurance contributions was not the main purpose, or one of the main purposes, of the arrangements under which the right or opportunity to acquire the employment-related securities was made available.”.
- (5) In subsection (4) of sections 429, 443 and 446R, and in subsection (3) of section 449, for the words after “are not” substitute “employment-related securities.”; and accordingly omit sections 429(5), 443(5), 446R(5) and 449(4).
- (6) In Chapter 3A of that Part of that Act (securities with artificially depressed market value), after section 446I insert—

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**“446IA Disapplication of exceptions from charges**

- (1) Section 429 (exception from charge under section 426 for certain company shares) does not prevent section 426 (restricted securities: chargeable events) applying in relation to an event if section 446E or 446I(1)(a) would have effect in relation to the event.
  - (2) Section 443 (exception from charge under section 438 for certain company shares) does not prevent section 438 (convertible securities: chargeable events) applying in relation to an event if section 446G, 446H or 446I(1)(b) would have effect in relation to the event.
  - (3) Section 446R (exception from charge under Chapter 3C for certain company shares) does not prevent that Chapter (securities acquired for less than market value) applying in relation to employment-related securities if section 446B would have effect in relation to them.
  - (4) Section 449 (exception from charge under Chapter 4 for certain company shares) does not prevent that Chapter (benefits from securities) applying in relation to a benefit if section 446I(1)(e) would have effect in relation to the benefit.”.
- (7) In Chapter 3B of that Part of that Act (securities with artificially enhanced market value), after section 446N insert—

**“446NA Disapplication of exceptions from charges**

- (1) None of the provisions specified in subsection (2) (exceptions from charges for certain company shares) apply in relation to employment-related securities if the market value of the employment-related securities at the time of the acquisition has been increased by at least 10% by non-commercial increases within the period of 7 years ending with the acquisition.
  - (2) The provisions are—
    - (a) section 429 (restricted securities),
    - (b) section 443 (convertible securities),
    - (c) section 446R (securities acquired for less than market value), and
    - (d) section 449 (post-acquisition benefits from securities).
  - (3) If section 446L (market value on valuation date increased by more than 10% by non-commercial increases during relevant period) applies in relation to employment-related securities, section 429 does not subsequently apply in relation to the employment-related securities.”.
- (8) This section applies on and after 7th May 2004.

**87 Restricted securities with artificially depressed value**

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

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“(aa) immediately before the employment-related securities are disposed of (in circumstances which do not constitute such an event) or are cancelled without being disposed of.”.

(3) For subsections (3) to (6) substitute—

“(3) “The relevant period” is the period beginning—

- (a) if section 425(2) (no charge on acquisition of certain restricted securities or restricted interests in securities) applied in relation to the employment-related securities, 7 years before the acquisition, and
- (b) in any other case, 7 years before the relevant date,

and ending with the relevant date.

(4) “The relevant date” is—

- (a) in a case within subsection (1)(a), the date on which the chargeable event concerned occurs,
- (b) in a case within subsection (1)(aa), the date on which the disposal or cancellation concerned occurs, and
- (c) in a case within subsection (1)(b), the 5th April concerned.

(5) Where this section applies in a case within subsection (1)(aa) or (b), a chargeable event within section 427(3)(a) (lifting of restrictions) is to be treated as occurring in relation to the employment-related securities on the relevant date.

(6) In every case where this section applies, subsection (1) of section 428 (amount of charge on restricted securities) applies as if the reference in subsection (2) of that section to what would be the market value of the employment-related securities immediately after the chargeable event but for any restrictions were to what would be their market value at the appropriate time but for the matters to be disregarded.

(7) “The appropriate time” is—

- (a) in a case within subsection (1)(a) or (b), the time immediately after the chargeable event concerned, and
- (b) in a case within subsection (1)(aa), the time immediately before the chargeable event concerned.

(8) “The matters to be disregarded” are—

- (a) any restrictions,
- (b) the things done as mentioned in subsection (2), and
- (c) if the employment-related securities are about to be disposed of or cancelled, that fact.

(9) Where this section applies in a case within subsection (1)(aa), section 428(1) applies with the omission of the reference to OP.

(10) Where this section applies in a case within subsection (1)(a) and the chargeable event concerned is within section 427(3)(c) (disposal for consideration), section 428 applies with the omission of subsection (9) (case where consideration is less than actual market value).”.

(4) This section applies on and after 7th May 2004.

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

## **88 Shares under approved plans and schemes**

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

### **“431A Shares under approved plan or scheme**

- (1) Where employment-related securities are restricted securities or a restricted interest in securities, the employer and the employee are to be treated as making an election under section 431(1) in relation to the employment-related securities if they are shares, or an interest in shares, to which this subsection applies.
- (2) Subsection (1) applies to—
  - (a) shares awarded or acquired under an approved share incentive plan (within the meaning of Chapter 6 of this Part) in circumstances in which (in accordance with section 490) no liability to income tax arises,
  - (b) shares acquired by the exercise of a share option granted under an approved SAYE option scheme (within the meaning of Chapter 7 of this Part) in circumstances in which (in accordance with section 519) no liability to income tax arises,
  - (c) shares acquired by the exercise of a share option granted under an approved CSOP scheme (within the meaning of Chapter 8 of this Part) in circumstances in which (in accordance with section 524) no liability to income tax arises, and
  - (d) shares acquired by the exercise of a qualifying option within the meaning of section 527(4) (enterprise management incentives) in circumstances in which (in accordance with section 530) no liability to income tax arises.”.
- (4) In section 489 (operation of tax advantages in connection with approved share incentive plans), after subsection (3) insert—
 

“(4) And those sections do not apply if the main purpose (or one of the main purposes) of the arrangements under which the shares in question are awarded or acquired is the avoidance of tax or national insurance contributions.”.
- (5) In sections 505 and 506 (charge on shares ceasing to be subject to approved share incentive plan), after subsection (4) insert—



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- “(4A) Any tax due under subsection (2) or (3) is reduced by the amount or aggregate amount of any tax paid by virtue of Chapter 3B of this Part in relation to the shares.”.
- (6) In section 519(1) (approved SAYE option schemes: no charge in respect of exercise of option) insert at the end “and
- (c) the avoidance of tax or national insurance contributions is not the main purpose (or one of the main purposes) of any arrangements under which the option was granted or is exercised.”.
- (7) In section 524(1) (approved CSOP schemes: no charge in respect of exercise of option) insert at the end “and
- (c) the avoidance of tax or national insurance contributions is not the main purpose (or one of the main purposes) of any arrangements under which the option was granted or is exercised.”.
- (8) Section 701 (PAYE: meaning of “asset”) is amended as follows.
- (9) In subsection (2)(c)—
- (a) in sub-paragraph (ia), for the words after “employee” substitute “under a scheme approved under Schedule 4 (approved CSOP schemes) in circumstances in which Condition A or B as set out in section 524(2) or (2A) is met.”;
- (b) omit sub-paragraph (ii), and
- (c) in sub-paragraph (iii), after “1996” insert “where the avoidance of tax or national insurance contributions is not the main purpose (or one of the main purposes) of any arrangements under which the right was obtained or is exercised”.
- (10) After subsection (3) insert—
- “(3A) Paragraph (c) of subsection (2) does not apply to shares after their acquisition as mentioned in that paragraph.”.
- (11) This section has effect on and after 18th June 2004 and (so far as it does not relate to the award or acquisition of shares) applies in relation to shares awarded or acquired before that date as well as in relation to those awarded or acquired on or after that date.
- (12) Where section 431A(1) of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (as inserted by subsection (3)) has effect (by virtue of subsection (11)) in relation to shares acquired before 18th June 2004, it applies in relation to them so as to treat an election under section 431(1) of that Act as made in relation to them on that date.
- (13) For the purposes of the application of Chapter 3B of Part 7 of that Act (securities with artificially enhanced market value) by reason of subsections (2) and (11) in relation to shares acquired before 18th June 2004, section 446O of that Act (meaning of “relevant period”) has effect as if they were acquired on that date.

## **89 Shares acquired on public offer**

- (1) Section 421F of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (exclusion from Chapters 2 to 4 of Part 7 of shares acquired under terms of offer to the public) is amended as follows.

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- (2) In subsection (1), for “Chapters 2 to 4” substitute “Chapters 2, 3 and 3C”.
- (3) After that subsection insert—
  - “(1A) But subsection (1) does not disapply those Chapters if the main purpose (or one of the main purposes)—
    - (a) of the arrangements under which the right or opportunity under which the shares were acquired, or
    - (b) for which the shares are held,
 is the avoidance of tax or national insurance contributions.”.
- (4) This section has effect on and after 18th June 2004 and applies in relation to shares acquired before that date as well as in relation to those acquired on or after that date.
- (5) For the purposes of the application of Chapter 3B of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (securities with artificially enhanced market value) by reason of subsections (2) and (4) in relation to shares acquired before that date, section 446O of that Act (meaning of “relevant period”) has effect as if they were acquired on that date.

## **90 Associated persons etc.**

- (1) Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (employment income: securities) is amended as follows.
- (2) In section 421C(2) (meaning of “relevant linked person” for purposes of Chapters 1 to 4), for “are connected or, although not connected, are” substitute “are or have been connected or (without being or having been connected) are or have been”.
- (3) In section 472(2) (meaning of “relevant linked person” for purposes of Chapter 5), for “are connected or, although not connected, are” substitute “are or have been connected or (without being or having been connected) are or have been”.
- (4) In section 477(3)(c) (chargeable events in relation to employment-related securities options), for the words after “benefit” substitute “in connection with the employment-related securities option (other than one within paragraph (a) or (b)).”
- (5) This section has effect on and after 18th June 2004 and applies in relation to securities, interests and options that were employment-related securities or employment-related securities options on that date (as well as those acquired on or after that date).

### *Miscellaneous*

## **91 Income of spouses: jointly held property**

- (1) Section 282A of the Taxes Act 1988 is amended as follows.
- (2) After subsection (4) insert—
  - “(4A) Subsection (1) above shall not apply to income consisting of a distribution arising from property consisting of—
    - (a) close company shares to which either the husband or the wife is beneficially entitled to the exclusion of the other, or

- (b) close company shares to which they are beneficially entitled in equal or unequal shares.

In this subsection “close company shares” means shares in or securities of a close company; and for this purpose “shares” and “securities” have the same meaning as in Part 6 (see section 254).”.

- (3) This section has effect in relation to the year 2004-05 and subsequent years of assessment.

## **92 Minor amendments of or connected with ITEPA 2003**

Schedule 17 to this Act contains minor amendments of or connected with the Income Tax (Earnings and Pensions) Act 2003 (c. 1).