



# Income Tax (Earnings and Pensions) Act 2003

## 2003 CHAPTER 1

### PART 7

#### EMPLOYMENT INCOME: SHARE-RELATED INCOME AND EXEMPTIONS

### CHAPTER 4

#### POST-ACQUISITION BENEFITS FROM SHARES

##### *Introduction*

#### **447 Application of this Chapter**

- (1) This Chapter applies where a person (“the employee”)—
  - (a) acquires shares or an interest in shares in a company, and
  - (b) does so as a director or employee of that or another company.
- (2) In this Chapter (unless the context indicates a different meaning)—
  - “the acquisition” means the acquisition of shares or an interest in shares mentioned in subsection (1)(a);
  - “the shares” means the shares mentioned there;
  - and “director” and “employee” have the extended meaning given by section 470(1).
- (3) The company as a director or employee of which the employee acquires the shares or the interest in them is “the employer company” for the purposes of this Chapter.
- (4) For the purposes of this Chapter a person (“E”) acquires shares or an interest in shares “as a director or employee” of a company if E acquires the shares or interest in pursuance of—

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- (a) a right conferred on, or an opportunity offered to, E by reason of E's office as a director of, or E's employment by, the company; or
  - (b) a right assigned to E after having been conferred on some other person by reason of E's office as a director of, or E's employment by, the company.
- (5) In addition, if a person ("A") acquires shares or an interest in shares in a company in pursuance of a right conferred on, or opportunity offered to, A as a person connected with a director or employee of that or another company ("the company"), the director or employee is to be treated for the purposes of this Chapter—
- (a) as acquiring the shares or interest "as a director or employee" of the company, and
  - (b) as holding any beneficial interest in the shares for the time being held by A; and subsections (1) to (3) apply accordingly.
- (6) Section 463 provides for a person to be treated as continuing to have a beneficial interest in shares until there is a qualifying disposal for the purposes of that section.

#### **448 Cases where this Chapter does not apply**

- (1) This Chapter does not apply where a person has acquired shares or an interest in shares as a director or employee of a company if the earnings from the office or employment in question 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 does not apply where a person has acquired shares or an interest in shares under the terms of an offer to the public.
- (3) In a case within section 544(1) (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 section is to be treated for the purposes of this Chapter as made under the terms of an offer to the public.
- (4) Subsection (3) applies whether or not there is any benefit within section 544(2) (benefit derived from entitlement to priority allocation exempt from income tax).

#### *Tax charge where restrictions or rights varied*

#### **449 Charge on occurrence of chargeable event**

- (1) This section applies if a chargeable event occurs in relation to the shares at a time when the employee has not ceased to have a beneficial interest in them.
- (2) The taxable amount determined under section 451 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 450 explains what are chargeable events for the purposes of this section.
- (5) This section is subject to—
  - section 452 (cases outside charge under this section),
  - section 494 (approved SIPs: no charge on removal of restrictions),

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section 520 (approved SAYE option schemes: no charge in respect of post-acquisition benefits), and  
section 525 (approved CSOP schemes: no charge in respect of post-acquisition benefits).

#### **450 Chargeable events**

- (1) This section applies for the purposes of section 449 (charge on occurrence of chargeable event).
- (2) Unless excluded by subsection (4), any of the events mentioned in subsection (3) is a “chargeable event” in relation to shares in a company if it increases the value of the shares or would do so but for the occurrence of some other event.
- (3) The events are—
  - (a) the removal or variation of a restriction applying to the shares,
  - (b) the creation or variation of a right relating to the shares,
  - (c) the imposition of a restriction applying to other shares in the company,
  - (d) the variation of a restriction applying to other shares in the company, and
  - (e) the removal or variation of a right relating to other shares in the company.
- (4) An event within subsection (3) is not a “chargeable event” if the restriction or right applies to all shares of the class concerned and any of the following conditions is met at the time of the event—
  - (a) the company is employee-controlled because of holdings of shares of the relevant class;
  - (b) the majority of the company’s shares of the relevant class are held by outside shareholders;
  - (c) the company is a 51% subsidiary with shares of a single class.
- (5) “The relevant class” means the class of shares to which the shares belong.
- (6) References in this section—
  - (a) to restrictions to which shares are subject, or
  - (b) to rights relating to shares,are references to such restrictions imposed or rights conferred by contract, arrangement or in any other way.

#### **451 Amount of charge**

- (1) The taxable amount for the purposes of section 449 (charge on occurrence of chargeable event) is—
  - (a) the amount by which the value of the shares is increased by the chargeable event, or
  - (b) if that amount is affected by the occurrence of some other event, the amount by which that value would have been increased but for that other event.
- (2) If the interest of the employee is less than full beneficial ownership, the taxable amount is an appropriate proportion of the amount mentioned in subsection (1)(a) or (b).

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## **452 Cases outside charge under section 449**

- (1) Section 449 (charge on occurrence of chargeable event) does not apply in the following cases.
- (2) Section 449 does not apply if, by virtue of section 427 (charge on interest ceasing to be only conditional, etc.), an amount counts as employment income of the employee in respect of the chargeable event.
- (3) Section 449 does not apply in relation to shares in a company if the employee has not, at any time in the period of 7 years ending with the date on which the chargeable event occurs, been a director or employee of—
  - (a) the employer company;
  - (b) if different, the company whose shares they are; or
  - (c) an associated company of a company within paragraph (a) or (b).
- (4) Section 449 does not apply in relation to shares in a company which—
  - (a) was a dependent subsidiary at the time of the acquisition, or
  - (b) is a dependent subsidiary immediately before the time of the chargeable event.
- (5) But in such a case section 453 (charge on increase in value of shares of dependent subsidiaries) may apply.

*Tax charge on increase in value of shares of dependent subsidiaries*

## **453 Charge on increase in value of shares of dependent subsidiary**

- (1) This section applies if the shares are shares in a company—
  - (a) which was a dependent subsidiary at the time of the acquisition, or
  - (b) which was not then a dependent subsidiary but becomes one before the employee ceases to have a beneficial interest in the shares,and (in either case) there is a chargeable increase in the value of the shares.
- (2) The taxable amount determined under section 455 counts as employment income of the employee for the relevant tax year.
- (3) The “relevant tax year” is the tax year which includes the appropriate time (within the meaning of section 454(2) or (4)) by reference to which the chargeable increase is determined under that provision.
- (4) Section 454 explains what are chargeable increases for the purposes of this section.
- (5) This section is subject to—
  - section 456 (cases outside charge under this section),
  - section 495 (approved SIPs: no charge on increase in value of shares),
  - section 520 (approved SAYE option schemes: no charge in respect of post-acquisition benefits), and
  - section 525 (approved CSOP schemes: no charge in respect of post-acquisition benefits).

#### **454 Chargeable increases**

- (1) This section applies for the purposes of section 453 (charge on increase in value of shares of dependent subsidiary).
- (2) In a case within section 453(1)(a) (dependent subsidiary at time of the acquisition) there is a “chargeable increase” in the value of the shares if the value of the shares at the appropriate time exceeds their value at the time of the acquisition.
- (3) In subsection (2) “the appropriate time” means whichever is the earlier of—
  - (a) the end of the period of 7 years after the date of the acquisition, and
  - (b) the time when the employee ceases to have a beneficial interest in the shares.
- (4) In a case within section 453(1)(b) (company becoming dependent subsidiary after time of acquisition) there is a “chargeable increase” in the value of the shares if the value of the shares at the appropriate time exceeds their value at the time when the company becomes a dependent subsidiary.
- (5) In subsection (4) “the appropriate time” means whichever is the earlier or earliest of—
  - (a) the end of the period of 7 years after the date on which the company becomes a dependent subsidiary,
  - (b) the time when the employee ceases to have a beneficial interest in the shares, and
  - (c) if the company ceases to be a dependent subsidiary, the time when it does so.

#### **455 Amount of charge**

- (1) The taxable amount for the purposes of section 453 (charge on increase in value of shares of dependent subsidiary) is—

$$[I - DA]$$

where—

I is the amount of the chargeable increase in value of the shares, and

DA is the total of any deductible amounts.

This is subject to subsections (3) and (4).

- (2) For the purposes of subsection (1)—
  - (a) if the consideration for the acquisition is subsequently increased in accordance with the terms on which the acquisition was made, the amount of that increase is a “deductible amount”;
  - (b) if, before the time by reference to which the chargeable increase is determined, an event occurs in respect of the shares by virtue of which an amount counts as employment income of the employee under—
    - (i) Chapter 2 of this Part (conditional interests in shares), or
    - (ii) Chapter 3 of this Part (convertible shares),that amount is a “deductible amount”.
- (3) If, in accordance with the terms on which the acquisition was made, the employee subsequently ceases to have a beneficial interest in the shares as the result of a disposal made for a consideration which is less than the value of the shares or the employee’s interest in them at the time of the disposal, the amount “I” in subsection (1) is—

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- (a) if the disposal is within section 454(3)(b), an amount equal to the excess of that consideration over the value of the shares or interest at the time of the acquisition, or
  - (b) if the disposal is within section 454(5)(b), an amount equal to the excess of that consideration over the value of the shares or interest at the time of the company becoming a dependent subsidiary.
- (4) If the interest of the employee is less than full beneficial ownership, the amount “I” in subsection (1) is an appropriate proportion of the amount that it would be apart from this subsection.

#### **456 Cases outside charge under section 453**

- (1) Section 453 (charge on increase in value of shares of dependent subsidiary) does not apply in the following cases.
- (2) Section 453 does not apply if—
- (a) the chargeable increase arises in relation to a disposal of the employee’s beneficial interest in the shares, and
  - (b) by virtue of section 427 (charge on interest ceasing to be only conditional, etc.), an amount counts as employment income of the employee in respect of the disposal.
- (3) Section 453 does not apply in relation to shares in a company within subsection (1) (b) of that section (company becoming a dependent subsidiary after acquisition) if the employee has not, at any time in the period of 7 years ending with the date on which the company became a dependent subsidiary, been a director or employee of—
- (a) the employer company,
  - (b) if different, the company whose shares they are, or
  - (c) an associated company of a company within paragraph (a) or (b).

#### *Tax charge on other benefits from shares*

#### **457 Charge on other chargeable benefits from shares**

- (1) This section applies if a person within subsection (2) receives a chargeable benefit by virtue of that person’s ownership of or interest in the shares.
- (2) The persons within this subsection are—
- (a) the employee;
  - (b) the person referred to as “A” in section 447(5) (shares acquired by connected person), in a case where that provision applies in relation to the shares;
  - (c) any other person, in a case where the employee is for the time being treated as continuing to have a beneficial interest in the shares by virtue of section 463 (disposals of shares to connected persons etc. ignored).
- (3) The taxable amount determined under section 459 counts as employment income of the employee for the relevant tax year.
- (4) The “relevant tax year” is the tax year in which the benefit is received.
- (5) Section 458 explains what are chargeable benefits for the purposes of this section.

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- (6) This section—
- (a) does not apply if the benefit is otherwise chargeable to income tax, and
  - (b) is subject to section 460 (cases outside charge under this section).

#### **458 Chargeable benefits**

- (1) This section applies for the purposes of section 457 (charge on other chargeable benefits from shares).
- (2) A benefit received by a person is a “chargeable benefit” if subsection (3), (4) or (5) applies to the benefit.
- (3) This subsection applies to a benefit if, at the time when it becomes available, it is available to less than 90% of the persons who then hold shares of the same class as the shares.
- (4) This subsection applies to a benefit if, at the time when it is received—
  - (a) the company is a dependent subsidiary, and
  - (b) its shares are of a single class.
- (5) This subsection applies to a benefit if, at the time when it is received, none of the conditions in subsection (6) is met.
- (6) The conditions are—
  - (a) that the majority of the company’s shares in respect of which the benefit is received are held by outside shareholders;
  - (b) that the company is employee-controlled by virtue of holdings of shares of the same class as the shares;
  - (c) that, in a case where the company is a 51% subsidiary which is not a dependent subsidiary, the majority of its shares in respect of which the benefit is received are held otherwise than by or for the benefit of—
    - (i) directors or employees of the company,
    - (ii) a company which is an associated company of the company but is not its parent company, or
    - (iii) directors or employees of a company which is an associated company of the company.
- (7) For the purposes of this section—
  - (a) “the company”, in relation to the shares (see section 457(1)), means the company whose shares they are; and
  - (b) a company (“P”) is the “parent company” of another company (“S”) if S is a 51% subsidiary of P.

#### **459 Amount of charge**

The taxable amount for the purposes of section 457 (charge on other chargeable benefits) is the amount which the person receiving the benefit might reasonably expect to obtain from a sale in the open market.

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#### **460 Cases outside charge under section 457**

Section 457 (charge on other chargeable benefits) does not apply in relation to shares in a company if the employee has not, at any time in the period of 7 years ending with the date on which the benefit is received, been a director or employee of—

- (a) the employer company,
- (b) if different, the company whose shares they are, or
- (c) an associated company of a company within paragraph (a) or (b).

#### *Supplementary provisions*

#### **461 Related acquisitions of additional shares**

- (1) This section applies if, by virtue of holding the shares (“the original shares”) or the interest in them, the employee acquires—
  - (a) additional shares (“the additional shares”), or
  - (b) an interest in additional shares,
 whether for consideration or not.
- (2) The additional shares are, or the interest in them is, to be treated—
  - (a) for the purposes of this Chapter, as acquired by the employee as a director or employee of the employer company, and
  - (b) for the purposes only of sections 449 to 456 (charge on occurrence of chargeable event or increase in value of shares of dependent subsidiaries), as so acquired at the same time as the original shares or the interest in them.
- (3) For the purposes of sections 453 to 456 (charge on increase in value of shares of dependent subsidiaries)—
  - (a) the additional shares and the original shares are to be treated as one holding of shares,
  - (b) the value of the shares comprised in that holding at any time, and of interests in them, is to be determined accordingly (the value of the original shares at the time of the acquisition being attributed proportionately to all the shares in the holding), and
  - (c) any consideration given for the acquisition of the additional shares, or the interest in them, is to be treated as an increase in the consideration for the original acquisition for the purposes of section 455(2)(a) (amounts that may be deducted in calculating the amount of the tax charge).

#### **462 Company reorganisations etc.**

- (1) This section applies if—
  - (a) on a person ceasing to have a beneficial interest in shares, that person acquires other shares or an interest in other shares, and
  - (b) the circumstances are such that the shares in which the person ceases to have a beneficial interest constitute “original shares” and the other shares constitute a “new holding” for the purposes of sections 127 to 130 of TCGA 1992 (reorganisations).



- (2) Section 127 of TCGA 1992 (under which disposals on reorganisations are disregarded and new holdings are treated as acquired as the original shares were) applies for the purposes of this Chapter.
- (3) Any consideration which—
  - (a) the person gives or becomes liable to give for the new holding, and
  - (b) is not excluded by virtue of section 128(2) of TCGA 1992 from being consideration for the purposes of section 128(1) of that Act,is to be treated for the purposes of this Chapter as an increase in the consideration for the original acquisition for the purposes of section 455(2)(a) above (amounts that may be deducted in calculating the amount of the tax charge).
- (4) If any consideration of the kind mentioned in section 128(3) of TCGA 1992 is received for the disposal of the original shares—
  - (a) it is to be apportioned among the shares comprising the new holding, and
  - (b) the amount which, apart from this subsection, would at a subsequent time be the value of any of those shares is to be treated as being increased by the amount of the consideration apportioned to them.

#### **463 Disposals of shares to connected persons etc. ignored**

- (1) The employee is to be treated as continuing to have a beneficial interest in the shares for the purposes of this Chapter until there is a qualifying disposal of the shares or (as the case may be) of the interest in them.
- (2) A disposal is a “qualifying disposal” if—
  - (a) it is a disposal by a bargain at arm’s length with a person who is not connected with the person making the disposal (whether that is the employee or some other person), or
  - (b) it is a disposal, in accordance with the terms on which the acquisition was made, to the company whose shares they are.

#### **464 Application to interests in shares**

Where this Chapter applies to an interest in shares, an increase or reduction of the interest is to be treated as the acquisition or disposal of a separate interest proportionate to the increase or reduction.

#### **465 Duty to notify acquisitions of shares or interests in shares**

- (1) This section applies where a person acquires shares or an interest in shares as mentioned in section 447(1).
- (2) The cases where it applies accordingly include the case where an employee is treated as acquiring shares, or an interest in them, by virtue of section 461 or 462.
- (3) Each of the following—
  - (a) the employer company, and
  - (b) if different, the company whose shares they are,must provide the Inland Revenue with particulars in writing of the acquisition.

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- (4) The particulars must be provided before 7th July in the tax year following that in which the acquisition is made.
- (5) However, no particulars of any acquisition need be provided by a company under this section if the company has already given particulars of it under—
  - section 432 (conditional interest in shares), or
  - section 486 (shares allotted or transferred on exercise of share option).

#### **466 Duty to notify chargeable events and chargeable benefits**

- (1) This section applies where—
  - (a) a chargeable event (within the meaning given by section 450) occurs in relation to shares in a company, or
  - (b) a person receives a chargeable benefit (within the meaning given by section 458) in respect of shares, or an interest in shares, in a company.
- (2) Each of the following—
  - (a) the employer company, and
  - (b) if different, the company whose shares they are,
 must provide the Inland Revenue with particulars in writing of the chargeable event or chargeable benefit and of the shares concerned.
- (3) The particulars must be provided within 92 days after the date on which the event occurs or the benefit is received.

#### *Interpretation*

#### **467 Meaning of “dependent subsidiary”**

- (1) For the purposes of this Chapter a company which is a 51% subsidiary is a “dependent subsidiary” throughout a period of account of the company unless all of the following conditions are met—
  - (a) the conditions relating to the company in subsections (2) and (3),
  - (b) the condition relating to a directors' certificate in subsection (4), and
  - (c) the condition relating to an auditors' report in subsection (5).
- (2) The first condition relating to the company is that the whole or substantially the whole of the company's business during the period of account (taken as a whole) is carried on with persons who are not members of the same group as the company.
- (3) The second condition relating to the company is that during that period either—
  - (a) there is no increase in the value of the company as a result of intra-group transactions, or
  - (b) any such increase in value does not exceed 5% of the value of the company at the beginning of the period (or a proportionately greater or smaller percentage in the case of a period which is longer or shorter than a year).
- (4) The condition relating to a directors' certificate is that the directors of the principal company of the group give to the Inland Revenue, not later than 2 years after the end of the period of account, a certificate that in their opinion the conditions in subsections (2) and (3) are satisfied in relation to that period.

- (5) The condition relating to an auditors' report is that there is attached to that certificate a report addressed to those directors by the auditors of the subsidiary and stating that the auditors—
- (a) have enquired into the state of affairs of the company with particular reference to the conditions in subsections (2) and (3), and
  - (b) are not aware of anything to indicate that the opinion expressed by the directors in their certificate is unreasonable in all the circumstances.
- (6) For the purposes of subsection (2) business carried on with a 51% subsidiary of the company is to be treated as carried on with a person who is not a member of the same group as the company.
- (7) But subsection (6) does not apply if the whole or substantially the whole of the business of that or any other 51% subsidiary of the company during the period of account (taken as a whole) is carried on with members of the group other than the company and its 51% subsidiaries.
- (8) In this section—
- “group” means a principal company and all its 51% subsidiaries,
  - “intra-group transactions” means transactions 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 any payment for group relief within the meaning given in section 402(6) of ICTA),
  - “period of account”, in relation to a company, means the period for which it makes up its accounts, and
  - “principal company” means a company of which another company is a 51% subsidiary and which is not itself a 51% subsidiary of another company.

#### **468 Meaning of “employee-controlled”**

For the purposes of this Chapter 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 or directors of the company or a company controlled by the company, and
- (b) those directors and employees are together able as holders of the shares to control the company.

#### **469 Shares “held by outside shareholders”**

For the purposes of this Chapter a company’s shares are “held by outside shareholders” if the shares are held otherwise than by or for the benefit of—

- (a) directors or employees of the company,
- (b) an associated company of the company, or
- (c) directors or employees of any such associated company.

#### **470 Minor definitions**

- (1) In this Chapter—

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“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”, except in sections 452(3), 456, 460 and 468 (cases excluded from charges and definition of “employee-controlled”), includes a person who is to be or has been a director;

“employee”, except in those provisions, includes a person who is to be or has been an employee;

“interest in shares” includes an interest in the proceeds of sale of part of the shares, but not a right to acquire shares;

“shares” includes stock and any securities as defined in section 254(1) of ICTA;

“value”, in relation to shares, means the amount which the person holding the shares might reasonably expect to obtain from a sale in the open market.

(2) In this Chapter—

“the acquisition”,

“the employee”,

“the employer company”, and

“the shares”,

have the meaning indicated in section 447(1) to (3).