



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART V

PROVISIONS RELATING TO THE SCHEDULE E CHARGE

CHAPTER I

SUPPLEMENTARY CHARGING PROVISIONS OF GENERAL APPLICATION

Shareholdings, loans etc.

135 Gains by directors and employees from share options

- (1) Subject to section 185, where a person realises a gain by the exercise, or by the assignment or release, of a right to acquire shares in a body corporate obtained by that person as a director or employee of that or any other body corporate, he shall be chargeable to tax under Schedule E on an amount equal to the amount of his gain, as computed in accordance with this section.
- (2) Without prejudice to section 185, where tax may by virtue of this section become chargeable in respect of any gain which may be realised by the exercise of a right which is not capable of being exercised more than seven years after it is obtained, tax shall not be chargeable under any other provision of the Tax Acts in respect of the receipt of the right.
- (3) Subject to section 136(4)—
 - (a) the gain realised by the exercise of any such right at any time shall be taken to be the difference between the amount that a person might reasonably expect to obtain from a sale in the open market at that time of the shares acquired and the amount or value of the consideration given whether for them or for the grant of the right; and
 - (b) the gain realised by the assignment or release of any such right shall be taken to be the difference between the amount or value of the consideration for the

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assignment or release and the amount or value of the consideration given for the grant of the right;

(a just apportionment being made of any entire consideration given for the grant of the right to acquire those shares and other shares or otherwise for the grant of the right to acquire those shares and for something besides).

- (4) For the purposes of subsection (3) above, neither the consideration given for the grant of the right nor any such entire consideration as is mentioned in that subsection shall be taken to include the performance of any duties in or in connection with the office or employment by reason of which the right was granted, and no part of the amount or value of the consideration given for the grant shall be deducted more than once under that subsection.
- (5) Where such a right as is mentioned in subsection (1) above is obtained as mentioned therein and is capable of being exercised later than seven years after it is obtained, and the receipt of the right is chargeable to tax under any other provision of the Tax Acts, then—
- (a) the tax so charged shall be deducted from any tax which is chargeable under subsection (1) above by reference to the gain realised by the exercise, assignment or release of that right; and
 - (b) for the purpose of any such charge to tax in relation to the receipt of the right, the value of the right shall be taken to be not less than the market value at the time the right is obtained—
 - (i) of the shares which may be acquired by the exercise of the right, or
 - (ii) of shares for which shares so acquired may be exchanged,
 reduced by the amount or value (or, if variable, the least amount or value) of the consideration for which the shares may be so acquired.
- (6) Subject to subsection (7) below, a person shall, in the case of a right granted by reason of his office or employment, be chargeable to tax under this section in respect of a gain realised by another person—
- (a) if the right was granted to that other person, or
 - (b) if the other person acquired the right otherwise than by or under an assignment made by way of a bargain at arm's length, or if the two are connected persons at the time when the gain is realised,
- but in a case within paragraph (b) above the gain realised shall be treated as reduced by the amount of any gain realised by a previous holder on an assignment of the right.
- (7) A person shall not be chargeable to tax by virtue of subsection (6)(b) above in respect of any gain realised by another person if the first-mentioned person was divested of the right by operation of law on his bankruptcy or otherwise, but the other person shall be chargeable to tax in respect of the gain under Case VI of Schedule D.
- (8) In any case where—
- (a) a person has obtained any such right to acquire shares as is mentioned in subsection (1) above (“the first right”); and
 - (b) as to any of the shares to which the first right relates, he omits or undertakes to omit to exercise the right or grants or undertakes to grant to another a right to acquire the shares or any interest in them; and
 - (c) in consideration for or otherwise in connection with that omission, grant or undertaking, he receives any benefit in money or money's worth;

he shall be treated for the purposes of this section and section 136 as realising a gain by the assignment or release of the first right, so far as it relates to the shares in question, for a consideration equal to the amount or value of the benefit referred to in paragraph (c) above.

- (9) Where subsection (8) above has had effect on any occasion, nothing in that subsection affects the application of this section in relation to a gain realised on a subsequent occasion, except that on that subsequent occasion so much of the consideration given for the grant of the first right as was deducted on the first occasion shall not be deducted again.

136 Provisions supplementary to section 135

- (1) If a right to acquire shares in a body corporate is assigned or released in whole or in part for a consideration which consists of or comprises another right to acquire shares in that or any other body corporate, that other right shall not be treated as consideration for the assignment or release, but section 135 and this section shall apply in relation to it as they apply in relation to the right assigned or released and as if the consideration for its acquisition—

- (a) did not include the value of the right assigned or released, but
- (b) did include the amount or value of the consideration given for the grant of the right assigned or released so far as that has not been offset by any valuable consideration for the assignment or release other than the consideration consisting of the other right.

- (2) If—

- (a) as a result of two or more transactions a person ceases to hold a right to acquire shares in a body corporate and he or a connected person comes to hold another right to acquire shares in that or any other body corporate (whether or not acquired from the person to whom the other right was assigned), and
- (b) any of those transactions was effected under arrangements to which two or more persons holding rights in respect of which tax may be chargeable under this section were parties,

those transactions shall be treated for the purposes of subsection (1) above as a single transaction whereby the one right is assigned for a consideration which consists of or comprises the other right.

- (3) Subsection (2) above applies in relation to two or more transactions whether they involve an assignment preceding, coinciding with or subsequent to an acquisition.

- (4) In the case of a right to acquire shares granted before 3rd May 1966—

- (a) the amount of the gain realised at any time by the exercise, or by the assignment or release, of the right shall not exceed the difference between the market value of those shares at that time and their market value on 3rd May 1966 (and no gain shall be treated as so realised unless the later value exceeds the earlier value); and
- (b) subsection (2) of section 135 shall not affect tax chargeable under Case I of Schedule E in respect of the receipt of the right, but the amount, if any, on which tax is so chargeable shall be taken into account under subsection (3)(a) and (b) of that section in relation to the gain realised by the exercise or by the assignment or release, of the right as if that amount formed part (in addition to any other amount) of the consideration for the grant of the right.

- (5) For the purposes of this section and section 135—
- (a) references to the release of a right include references to agreeing to the restriction of the exercise of the right;
 - (b) “director” means—
 - (i) in relation to a body corporate the affairs of which are managed by a board of directors or similar body, a member of that board or similar body;
 - (ii) in relation to a body corporate the affairs of which are managed by a single director or similar person, that director or person;
 - (iii) in relation to a body corporate the affairs of which are managed by the members themselves, a member of the body corporate;
 and includes any person who is to be or has been a director;
 - (c) “employee”, in relation to a body corporate, includes any person taking part in the management of the affairs of the body corporate who is not a director, and includes a person who is to be or has been an employee; and
 - (d) in so far as the context permits, “shares” includes stock;
- and this section and section 135 shall apply in relation to any securities issued by a body corporate as they apply to shares in that body corporate.
- (6) Where in any year of assessment a body corporate grants a right in respect of which tax may become chargeable under section 135, or allots or transfers any shares in pursuance of such a right, or receives notice of the assignment of such a right or provides any benefit in money or money’s worth—
- (a) for the assignment or for the release in whole or in part of such a right; or
 - (b) for or in connection with an omission or undertaking to omit to exercise such a right; or
 - (c) for or in connection with the grant or undertaking to grant a right to acquire shares or an interest in shares to which such a right relates;
- it shall deliver particulars thereof in writing to the inspector not later than 30 days after the end of that year.

137 Payment of tax under section 135 by instalments

- (1) In any case where—
- (a) for any year of assessment a person is chargeable to tax under Schedule E, by virtue of section 135, on an amount equal to a gain realised by the exercise of a right to acquire shares which was obtained before 6th April 1984; and
 - (b) the shares acquired in the exercise of that right were acquired for a consideration which, subject to subsection (2) below, was not less than the market value (determined as for the purposes of the 1979 Act) of shares of the same class at the time the right was granted or, if the right was granted before 6th April 1982, 90 per cent. of that market value; and
 - (c) following an assessment for the year in which that right was exercised (“the relevant year”) an amount of tax chargeable by virtue of section 135 in respect of the amount referred to in paragraph (a) above and exceeding £250 is payable to the collector pursuant to regulations under section 203; and
 - (d) the person concerned makes an election in accordance with subsection (3) below,
- he shall be entitled to pay tax by instalments in accordance with subsection (4) below.

- (2) Shares which are acquired for a consideration less than that required by paragraph (b) of subsection (1) above by reason only of a diminution in the market value of shares of that class (determined as for the purposes of the 1979 Act) which is attributable solely to the share capital of the company issuing the shares being varied after the right to acquire the shares was granted, shall for the purposes of that paragraph be regarded as having been acquired for a consideration not less than that required by that paragraph.
- (3) An election under this section shall be made by notice to the inspector before the expiry of the period of 60 days beginning immediately after the end of the relevant year.
- (4) Where an election has been made under this section the tax referred to in subsection (1) (c) above shall, subject to subsection (5) and (6) below, be paid in five equal instalments as follows—
 - (a) the first shall be due and payable at the expiry of the period of 14 days beginning on the date on which application for the tax is made pursuant to regulations under section 203;
 - (b) the fifth shall be due and payable on the last day of the fifth year following the end of the relevant year; and
 - (c) the second, third and fourth instalments shall be due on such dates as will secure, so far as may be, that the interval between any two consecutive dates is the same.
- (5) In any case where the date which, apart from this subsection, would be the due date for the fifth instalment of tax under subsection (4) above is earlier than the due date referred to in paragraph (a) of that subsection, all five instalments shall be due on the later date.
- (6) Tax which, by virtue of an election under this section, is not yet due and payable in accordance with subsection (4) above may nevertheless be paid at any time and shall become due and payable forthwith if the person who made the election becomes bankrupt under the law of any part of the United Kingdom.
- (7) Subject to any other provision of the Income Tax Acts requiring income of any description to be treated as the highest part of a person's income, for the purposes of paragraph (c) of subsection (1) above in determining what tax is chargeable on a person by virtue of section 135 in respect of the amount referred to in paragraph (a) of that subsection, that amount shall be treated as the highest part of his income for the relevant year.

138 Share acquisitions by directors and employees

- (1) Subject to section 185 and the following provisions of this section, where a person has acquired or acquires shares or an interest in shares in a body corporate in pursuance of a right conferred on him or opportunity offered to him as a director or employee of that or any other body corporate, and not in pursuance of an offer to the public—
 - (a) if the market value of the shares at the end of the period mentioned in subsection (9) below exceeds their market value at the time of the acquisition, he shall be chargeable to tax under Schedule E for the year of assessment in which that period ends on an amount equal, except as provided by subsection (8) below, to the excess (or, if his interest is less than the full beneficial ownership, such part of that amount as corresponds to his interest);
 - (b) if he receives, by virtue of his ownership of or interest in the shares, any benefit not received by the majority of persons who—

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- (i) hold shares forming part of the ordinary share capital of the same body corporate; and
 - (ii) have acquired the shares otherwise than as mentioned above;
- and the benefit is not otherwise chargeable to income tax, he shall be chargeable to tax under Schedule E for the year of assessment in which he receives the benefit on an amount equal to the value of the benefit;
- and any amount chargeable under this subsection shall be treated as earned income, whether or not it would otherwise fall to be so treated.
- (2) Subsection (1) above does not apply if the acquisition—
- (a) was made in pursuance of arrangements under which employees of a body corporate receive as part of their emoluments shares or interests in shares in that body or in a body controlling it to an extent determined in advance by reference to the profits of either body; and
 - (b) where the arrangements were made or modified after 22nd March 1973, was of shares or an interest in shares which satisfy the conditions set out in subsection (4)(a) below and the arrangements satisfy the condition set out in subsection (4)(b) below.
- (3) Subsection (1)(a) above does not apply if—
- (a) the acquisition was an acquisition of shares in a body and either of the following conditions was satisfied immediately after the acquisition, namely—
 - (i) that the shares were not subject to such restrictions as are specified in subsection (6) below, and were not exchangeable for shares subject to such restrictions, and the majority of the available shares of the same class was acquired otherwise than as mentioned in subsection (1) above; or
 - (ii) that the shares were not subject to such restrictions as are specified in paragraph (a) or (b) of subsection (6) below and were not exchangeable for shares subject to such restrictions, and the majority of the available shares of the same class was acquired by persons who were or had been employees or directors of, or of a body controlled by, that body and who were together able as holders of the shares to control that body; or
 - (b) the acquisition was an acquisition after 5th April 1984 of an interest in shares which consists of units in an authorised unit trust and—
 - (i) prior to the acquisition the unit trust was approved by the Board for the purposes of this section and, at the time of the acquisition, continues to be so approved, and
 - (ii) the condition set out in subsection (7) below is fulfilled with respect to the body corporate (in that subsection referred to as “the relevant company”) directorship of or employment by which gave rise to the right or opportunity by virtue of which the acquisition was made; or
 - (c) the acquisition took place before 6th April 1981.
- (4) The conditions referred to in subsection (2)(b) above are as follows—
- (a) that the shares—
 - (i) are not subject to such restrictions as will or may result in the person acquiring the shares or an interest in the shares obtaining a benefit

- through an increase, subsequent to the acquisition, of the value or the value to him of the shares or interest; and
- (ii) cannot (whether by one transaction or a series of transactions) be exchanged for or converted into shares which are subject to such restrictions; and
 - (iii) are either shares of a class quoted on a recognised stock exchange or are shares in a company which is not under the control of another company;
- (b) that the arrangements allow every full-time employee of the company concerned who—
- (i) has been a full-time employee of that company for a continuous period of not less than five years, and
 - (ii) is chargeable to tax in respect of his employment under Case I of Schedule E, and
 - (iii) is not less than 25 years old, to acquire shares or interests in shares of the same class on similar terms.
- (5) For the purposes of subsection (3)(a) above—
- (a) shares in a body are available shares if they are not held by or for the benefit of an associated company of that body; and
 - (b) shares are exchangeable for other shares if (whether by one transaction or a series of transactions) they can be exchanged for or converted into the other shares.
- (6) The restrictions referred to in subsection (3)(a) above are—
- (a) restrictions not attaching to all shares of the same class; or
 - (b) restrictions ceasing or liable to cease at some time after the acquisition; or
 - (c) restrictions depending on the shares being or ceasing to be held by directors or employees of any body corporate (other than such restrictions imposed by a company's articles of association as require shares to be disposed of on ceasing to be so held).
- (7) The condition referred to in subsection (3)(b) above is fulfilled with respect to the relevant company if, for no continuous period of one month or more, throughout which any director or employee of the relevant company either—
- (a) has, by virtue of his office or employment, any such right or opportunity as is referred to in subsection (1) above to acquire units in the unit trust, or
 - (b) retains any beneficial interest in any units in the unit trust which he acquired in pursuance of such a right or opportunity,
- do investments in the relevant company and in any other company in relation to which the relevant company is an associated company make up more than 10 per cent. by value of the investments subject to the trusts of the unit trust.
- (8) The amount on which or on part of which the person making the acquisition is chargeable to tax under subsection (1)(a) above (“the chargeable amount”) shall, in the following cases, be reduced as follows, that is to say—
- (a) where, in accordance with the terms on which the acquisition of the shares was made, the consideration for the acquisition is subsequently increased, the chargeable amount shall be reduced by an amount equal to the increase; and
 - (b) where, in accordance with those terms, the shares are subsequently disposed of for a consideration which is less than their market value at the time of

the disposal, the chargeable amount shall be reduced so as to be equal to the excess of that consideration over the market value of the shares at the time of the acquisition;

and similarly where the interest acquired is less than the full beneficial ownership, and such assessments, alterations of assessments or repayments of tax shall be made as may be necessary to give effect to the reduction.

(9) The period referred to in subsection (1)(a) above is a period ending at the earliest of the following times—

- (a) the expiration of seven years from the acquisition of the shares or interest in the shares;
- (b) the time when the person making the acquisition ceases to have any beneficial interest in the shares;
- (c) in relation only to a person who acquires shares, the time when by reason of their ceasing to be subject to such restrictions as are specified in subsection (6) above either of the conditions in subsection (3)(a) above would be satisfied in relation to the shares if they had been acquired at that time;

and for the purposes of subsection (1)(a) and paragraph (b) above a person whose beneficial interest in shares is reduced shall be treated as ceasing to have an interest in such part of the shares as is proportionate to the reduction.

(10) Subsection (11) below applies where—

- (a) a person has acquired shares or an interest in shares as mentioned in subsection (1) above (and the shares which he acquires or in which he acquires an interest are in sub-paragraphs (b) and (c) and subsection (11) below referred to as “the original shares”); and
- (b) the circumstances of his acquisition of the original shares are such that the application of subsection (1)(a) above is not excluded; and
- (c) after 18th March 1986 by virtue of his holding of the original shares or the interest in them he acquires (whether or not for consideration) additional shares or an interest in additional shares (and the shares which he so acquires or in which he so acquires an interest are in subsection (11) below referred to as “the additional shares”).

(11) Where this subsection applies—

- (a) the additional shares or, as the case may be, the interest in them shall be treated as having been acquired as mentioned in subsection (1) above and in circumstances falling within subsection (10)(b) above and, for the purposes of subsection (9)(a) above, as having been acquired at the same time as the original shares or the interest in them;
- (b) for the purposes of subsections (1)(a) and (8) above, the additional shares and the original shares shall be treated as one holding of shares and the market value of the shares comprised in that holding at any time shall be determined accordingly (the market value of the original shares at the time of acquisition being attributed proportionately to all the shares in the holding); and
- (c) for the purposes of those subsections, any consideration given for the acquisition of the additional shares or the interest in them shall be taken to be an increase falling within subsection (8)(a) above in the consideration for the original shares or the interest in them.

- (12) Subsection (1)(b) above does not apply where the benefit is received by virtue of a person's ownership of or of an interest in shares which were acquired before 6th April 1972.

139 Provisions supplementary to section 138

(1) Where—

- (a) a director or employee of a body corporate acquires shares in pursuance of an opportunity to acquire shares of that class offered to directors and employees of the body in their capacity as such (“the discount offer”); and
- (b) the discount offer is made in conjunction with an offer to the public (“the main offer”) under which shares of the same class may be acquired on the same terms, except that a discount in price is offered to directors and employees; and
- (c) the director or employee is chargeable to tax under Schedule E on an amount equal to the discount in the price of the shares acquired by him; and
- (d) at least 75 per cent. of the aggregate number of shares of the class in question which are acquired in pursuance of the discount offer and the main offer taken together are shares acquired in pursuance of the main offer,

he shall be treated for the purposes of section 138(1) as acquiring the shares in pursuance of an offer to the public.

- (2) Where a director or employee acquires an interest in shares, subsection (1) above shall apply as if the references in that subsection to the acquisition of shares were references to the acquisition of an interest in shares.
- (3) For the purposes of section 138 and this section, where a person acquires any shares or an interest in shares in a body corporate in pursuance of a right conferred on him or opportunity offered to him as a person connected with a director or employee of that or any other body corporate, the shares or interest shall be deemed to be acquired by the director or employee, and section 32A(4) of the 1979 Act shall apply with the necessary modifications; and where that person receives a benefit as mentioned in section 138(1)(b) the benefit shall be deemed to be received by the director or employee.
- (4) For the purposes of section 138, a person who disposes of shares or an interest in shares otherwise than by a bargain at arm's length with a person who is not connected with him shall be deemed not to cease to have a beneficial interest in the shares.
- (5) Where in any year of assessment a person acquires shares or an interest in shares as mentioned in section 138(1) (disregarding subsections (1) and (2) above), the body from which the shares are or the interest is acquired shall deliver to the inspector within 30 days of the end of that year particulars in writing of the shares and the acquisition.
- (6) The Board may by notice require the managers or trustees of any unit trust scheme which is an authorised unit trust approved by the Board for the purposes of section 138 to furnish to the Board within such time as they may direct (but not being less than 30 days) such information as the Board think necessary for the purposes of enabling them to determine—
 - (a) whether the condition in subsection (7) of that section is being or has at any time been fulfilled; and
 - (b) the liability to tax of any unit holder whose rights were acquired as mentioned in subsection (1) of that section.

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- (7) Subject to subsection (9) below, in determining for the purposes of section 138 (including any valuation made for those purposes) whether shares which, or interests in which, have been acquired or are or are to be acquired by any person are subject to any restrictions, there shall be regarded as a restriction attaching to the shares any contract, agreement, arrangement or condition by which his freedom to dispose of the shares or any interest in them or to exercise any right conferred by them is restricted or by which such a disposal or exercise may result in any disadvantages to him or a person connected with him, except where the restriction is imposed as a condition of a loan which is not a related loan as defined by subsection (8) below.

This subsection does not apply where the person acquired the shares before 19th October 1972.

- (8) A loan made to any person is a related loan for the purposes of subsection (7) above if—
- (a) it is made, arranged, guaranteed or in any way facilitated by—
 - (i) the body corporate of which he is a director or employee, or
 - (ii) an associated company of that body, or
 - (iii) if that body or an associated company of it is a close company, any person having a material interest in the close company; or
 - (b) it is made to a person connected with another person and would have been such a loan if it had been made to that other person;

but a loan made by the body corporate, associated company or person mentioned in paragraph (a) above is not a related loan if that body, company or person carries on a business of making personal loans and the loan is made in the ordinary course of that business.

- (9) For the purposes of section 138(3)(a), shares acquired by any person shall not, by virtue of subsection (7) above, be regarded as subject to any restriction by reason only of any contract, agreement, arrangement or condition providing for the disposal of the shares, when that person ceases to hold the office or employment by virtue of which he acquired the shares, to a person nominated in accordance with the contract, agreement, arrangement or condition if he is required to dispose of them at a price not exceeding their market value.
- (10) Any reference in subsection (7) above to a contract, agreement, arrangement or condition does not include a reference to so much of any contract, agreement, arrangement or condition as contains provisions similar in purpose and effect to any of the provisions of the Model Rules set out in the Model Code for Securities Transactions by Directors of Listed Companies issued by the Stock Exchange in November 1984.

- (11) In section 138 and this section—
- “associated company” has the meaning given by section 416;
 - “control” has the meaning given by section 840;
 - “director” includes a person who is to be a director;
 - “employee” includes a person who is to be an employee;
 - “full-time”, in relation to an employee, means required to devote substantially the whole of his time to service as an employee;
 - “shares” includes stock and securities and references to an interest in any shares include references to the proceeds of sale of part of the shares; and
 - “units”, in relation to an authorised unit trust, means an entitlement to a share in the investments subject to that trust.

- (12) For the purposes of section 138 and this section, section 168(11) shall apply for determining whether a person has a material interest in a company, but with the omission of the words following “417(3)”.
- (13) If, on a person ceasing to have a beneficial interest in any shares, he acquires, after 18th March 1986, other shares or an interest in other shares and the circumstances are such that, for the purposes of sections 78 to 81 of the 1979 Act (reorganisations etc.) the shares in which he ceases to have a beneficial interest constitute original shares and the other shares constitute a new holding—
- (a) section 78 of that Act (which equates the original shares with the new holding) shall apply for the purposes of this section and section 138;
 - (b) if any such consideration is given for the new holding as is mentioned in section 79(1) of that Act, it shall be treated for the purposes of this section and section 138 as an increase falling within section 138(8)(a) in the consideration for the shares; and
 - (c) if any such consideration is received for the disposal of the original shares as is mentioned in section 79(2) of the 1979 Act—
 - (i) the consideration shall be apportioned among the shares comprised in the new holding, and
 - (ii) the amount which, apart from this paragraph, would at any subsequent time be the market value of any of those shares shall be taken to be increased by the amount of the consideration apportioned to them;and in paragraphs (a) to (c) above “the original shares” shall be construed in accordance with sections 78 to 81 of the 1979 Act.
- (14) In any case where section 138(1) applies and the acquisition was an acquisition of units in an authorised unit trust—
- (a) any reference in section 138(1)(a), (8) or (9) or subsection (4) above or section 32A(4) of the 1979 Act to shares shall be construed as references to units; and
 - (b) any reference in those provisions to an interest in shares shall be omitted.

140 Further interpretation of sections 135 to 139

- (1) For the purposes of section 135, 136, 138 or 139, a right to acquire shares is obtained by a person as a director or employee (within the meaning of the section in question) of a body corporate—
- (a) if it is granted to him by reason of his office or employment as such a director or employee who is chargeable to tax in respect of that office or employment under Case I of Schedule E; or
 - (b) if the right is assigned to him and was granted by reason of any such office or employment of his to some other person;
- and paragraph (a) above shall apply to a right granted by reason of a person’s office or employment after he has ceased to hold it if it would apply to a right so granted in the last chargeable period in which he did hold it.
- (2) For those purposes any question whether a person is connected with another shall be determined in accordance with section 839.
- (3) For those purposes—

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“market value” has the same meaning as, for the purposes of the 1979 Act, it has by virtue of section 150 of that Act; and

“securities” has the meaning given by section 254(1).