

INCOME TAX (EARNINGS AND PENSIONS) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Example 3

Ne = £5,000; Da = 183; De = 183; Smg = 0

Part 7: Employment income: share-related income and exemptions

PAYE implications

Chapter 9: Enterprise management incentives

Overview

Section 532: Modified tax consequences following disqualifying events

2158. This section sets out what happens where there has been a disqualifying event and the option had not been exercised within 40 days of that event. The 40-day period of grace is in recognition of the fact that the option-holder may have no control over a disqualifying event.
2159. This provision derives from paragraph 53 of Schedule 14 to FA 2000. The section now has a more comprehensive heading and is in a more prominent position before the sections describing the various types of disqualifying event. This draws out the impact of such an event on income tax relief.
2160. The broad effect of an amendment in paragraph 11 of Schedule 14 to FA 2001 was that this set of rules wholly replaces those included in paragraphs 44 and 45 of Schedule 14 to FA 2000 (rewritten in sections 530 and 531), if a disqualifying event occurs. There is a slight change in the wording to reflect this, referring to the option being “within”, for example, section 530, rather than section 530 applying.
2161. The effect of the provision is to separate out and relieve the gain in the value of the share option accruing over the period up to the disqualifying event, leaving any gain accruing between the disqualifying event and the date of exercise fully chargeable. There is of course the usual deduction for anything paid for the grant of the option.
2162. As noted in relation to the preceding section there is no successor to paragraph 46 of Schedule 14 to FA 2000. Another small change has been made to this section to ensure that the whole picture is preserved. In *subsection (4)* there is an added reference to “if any” in the definition of “ACS”.
2163. The provision in sub-paragraph (2D) of paragraph 53 of Schedule 14 to FA 2000, has not been reproduced. This was a provision that stated that if the section 476 gain was nil there is no liability to income tax. This and the preceding section now use a

*These notes refer to the Income Tax (Earnings and Pensions)
Act 2003 (c.1) which received Royal Assent on 6th March 2003*

formulaic approach and a more general solution has been found to deal with negative results. Section 420 provides for the position where a formula in Part 7 would produce a negative result. The result is to be taken to be nil.

2164. *Subsection (6)* contains a clearer exposition of the rule in paragraph 53(3) of Schedule 14 to FA 2000 from which it derives. This ensures that the operation of this section does not result in a higher taxable amount than would be charged under section 476, if the EMI provisions did not apply. In this situation no part of either this section or of sections 530 and 531 apply (and so the amount is counted as income under section 476).