



Income Tax (Earnings and Pensions) Act 2003

2003 CHAPTER 1

PART 3

EMPLOYMENT INCOME: EARNINGS AND BENEFITS ETC. TREATED AS EARNINGS

CHAPTER 8

TAXABLE BENEFITS: NOTIONAL LOANS IN RESPECT OF ACQUISITIONS OF SHARES

Introduction

192 Application of this Chapter

- (1) This Chapter applies where—
 - (a) shares in a company are, or an interest in shares in a company is, acquired by an employee or a person connected with an employee, and
 - (b) the right or opportunity to acquire the shares or interest in shares was available by reason of the employment.
- (2) The shares may be in the employer, or in another company.
- (3) A right or opportunity to acquire shares or an interest in shares which is made available by the employer is to be regarded as made available by reason of the employment unless—
 - (a) the employer is an individual, and
 - (b) the right or opportunity is made available in the normal course of the employer's domestic, family or personal relationships.
- (4) In this Chapter—

Status: This is the original version (as it was originally enacted).

“the acquisition” means the acquisition of shares or an interest in shares mentioned in subsection (1), and

“the employment-related shares” means the shares or interest in shares acquired.

Acquisition of shares for less than market value

193 Notional loan where acquisition for less than market value

- (1) This section applies if—
- (a) no payment is made for the employment-related shares at or before the time of the acquisition, or
 - (b) the payment made at or before that time is less than—
 - (i) the market value at that time of fully paid up shares of their class, or
 - (ii) if the employment-related shares consist of an interest in shares, the proportion of the market value at that time of fully paid up shares of the same class as those in which the interest subsists that corresponds to the size of the interest.
- (2) For the purposes of subsection (1), any obligation to make payment or further payment at some later time is to be disregarded.
- (3) The provisions listed in subsection (4) apply as if a loan (“the notional loan”) had been made to the employee by the employer at the time of the acquisition which—
- (a) is an employment-related loan as defined in section 174, and
 - (b) is interest-free.
- (4) 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).
- (5) This section is subject to—
- section 491 (approved SIPs: no charge on award of shares as taxable benefit),
 - section 519 (approved SAYE option schemes: no charge in respect of exercise of option),
 - section 524 (approved CSOP schemes: no charge in respect of exercise of option),
 - section 540 (enterprise management incentives: no charge on acquisition of shares as taxable benefit),
 - section 542 (exemption: offer made to public and employees), and
 - section 544 (exemption: different offers made to public and employees).

194 The amount of the notional loan

(1) The amount of the notional loan initially outstanding is—

$$MV - DA$$

where—

MV is—

- (a) the market value of fully paid up shares of the same class as the employment-related shares, or
- (b) if the employment-related shares consist of an interest in shares, the proportion of the market value of fully paid up shares of the same class as those in which the interest subsists that corresponds to the size of the interest, and

DA is the total of any deductible amounts.

(2) For the purposes of subsection (1) each of the following is a “deductible amount”—

- (a) any payment made for the employment-related shares at or before the time of the acquisition;
- (b) any amount that constitutes earnings from the employee’s employment under Chapter 1 of this Part (earnings) in respect of the acquisition;
- (c) if the acquisition results from the exercise of a share option—
 - (i) any amount that constitutes earnings from the employment under Chapter 1 of this Part (earnings) in respect of the receipt of the share option,
 - (ii) any amount that is treated as earnings from the employment under Chapter 10 of this Part (taxable benefits: residual liability to charge) in respect of its receipt, and
 - (iii) any amount that counts as employment income of the employee under section 476 or 477 (charge on employee on exercise etc. of option by employee or another person) in respect of the exercise; and
- (d) if the acquisition results from the exercise of a share option and 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 share option, so much of that amount as is attributable to the employment-related shares.

(3) 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 shares after the acquisition but before that time.

195 Discharge of notional loan: amount treated as earnings

(1) The notional loan is to be treated as discharged when the following occurs—

- (a) payments or further payments for the employment-related shares equal to the amount initially outstanding have been made,
- (b) if the employment-related shares were not fully paid up at the time of the acquisition, any outstanding or contingent obligation to pay for them ceases to bind the employee or any person connected with the employee,

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- (c) the employment-related shares are disposed of so that neither the employee nor any person connected with the employee any longer has a beneficial interest in them, or
 - (d) the employee dies.
- (2) If—
- (a) a notional loan is discharged as a result of an event specified in subsection (1) (b) or (c), and
 - (b) at the time of that event the employee holds the employment by reason of which the right or opportunity to make the acquisition was available,
- the amount of the notional loan outstanding immediately before the occurrence of the event is to be treated as earnings from the employment for the tax year in which the event occurs.
- (3) But if the employment has terminated or become an excluded employment before that event and there was a time when—
- (a) the whole or part of the notional loan was outstanding,
 - (b) the employee held the employment, and
 - (c) it was not an excluded employment,
- subsection (2) applies as if the employment had not terminated or become an excluded employment.

Supplementary provisions

196 Effects on other income tax charges

Nothing in this Chapter affects any liability to income tax arising in respect of the acquisition by virtue of—

- (a) Chapter 1 of this Part (earnings), or
- (b) section 476 or 477 (charge on employee on exercise etc. of option by employee or another person).

197 Minor definitions

- (1) In this Chapter—
- “employee” includes a prospective employee;
 - “interest in shares” means an interest in shares less than full beneficial ownership and includes an interest in the proceeds of sale of part of the shares, but not a right to acquire shares;
 - “market value” has the same meaning as it has for the purposes of TCGA 1992 by virtue of Part 8 of that Act;
 - “shares” includes—
- (a) stock, and
 - (b) any securities as defined in section 254(1) of ICTA.
- (2) In this Chapter references to the acquisition of shares or an interest in shares include receipt by way of allotment or assignment or in any other way.

- (3) In this Chapter references to payment for the employment-related shares include giving any consideration in money or money's worth or making any subscription, whether in pursuance of a legal liability or not.
- (4) In this Chapter—
 “the acquisition”, and
 “the employment-related shares”,
have the meaning indicated in section 192(4).