



# Income Tax (Earnings and Pensions) Act 2003

## 2003 CHAPTER 1

An Act to restate, with minor changes, certain enactments relating to income tax on employment income, pension income and social security income; and for connected purposes. [6th March 2003]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART 1

#### OVERVIEW

#### 1 Overview of contents of this Act

- (1) This Act imposes charges to income tax on—
  - (a) employment income (see Parts 2 to 7),
  - (b) pension income (see Part 9), and
  - (c) social security income (see Part 10).
- (2) Those charges to tax have effect for the purposes of section 1(1) of ICTA (the general charge to income tax).
- (3) This Act also—
  - (a) confers certain reliefs in respect of liabilities of former employees (see Part 8),
  - (b) provides for the assessment, collection and recovery of income tax in respect of employment, pension or social security income that is PAYE income (see Part 11), and

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- (c) allows deductions to be made from such income in respect of payroll giving (see Part 12).

## 2 Abbreviations and general index in Schedule 1

- (1) Schedule 1 (abbreviations and defined expressions) applies for the purposes of this Act.
- (2) In Schedule 1—
- (a) Part 1 gives the meaning of the abbreviated references to Acts and instruments used in this Act, and
- (b) Part 2 lists the places where expressions used in this Act are defined or otherwise explained.
- (3) Part 2 of Schedule 1 does not apply to expressions used in Chapters 6 to 9 of Part 7 (share incentive plans and other arrangements for acquiring shares): separate indexes relating to these Chapters appear at the end of Schedules 2 to 5.

## PART 2

### EMPLOYMENT INCOME: CHARGE TO TAX

## CHAPTER 1

### INTRODUCTION

## 3 Structure of employment income Parts

- (1) The structure of the employment income Parts is as follows—
- this Part imposes the charge to tax on employment income, and sets out—
- (a) how the amount charged to tax for a tax year is to be calculated, and
- (b) who is liable for the tax charged;
- Part 3 sets out what are earnings and provides for amounts to be treated as earnings;
- Part 4 deals with exemptions from the charge to tax under this Part (and, in some cases, from other charges to tax);
- Part 5 deals with deductions from taxable earnings;
- Part 6 deals with employment income other than earnings or share-related income; and
- Part 7 deals with [F1 income and exemptions relating to securities and securities options acquired in connection with an employment].
- (2) In this Act “the employment income Parts” means this Part and Parts 3 to 7.

### Textual Amendments

- F1** Words in s. 3(1) substituted (16.4.2003 with effect in accordance with Sch. 22 para. 16(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 16\(1\)](#)

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#### **4 “Employment” for the purposes of the employment income Parts**

- (1) In the employment income Parts “employment” includes in particular—
  - (a) any employment under a contract of service,
  - (b) any employment under a contract of apprenticeship, and
  - (c) any employment in the service of the Crown.
- (2) In those Parts “employed”, “employee” and “employer” have corresponding meanings.

#### **5 Application to offices and office-holders**

- (1) The provisions of the employment income Parts that are expressed to apply to employments apply equally to offices, unless otherwise indicated.
- (2) In those provisions as they apply to an office—
  - (a) references to being employed are to being the holder of the office;
  - (b) “employee” means the office-holder;
  - (c) “employer” means the person under whom the office-holder holds office.
- (3) In the employment income Parts “office” includes in particular any position which has an existence independent of the person who holds it and may be filled by successive holders.

## **CHAPTER 2**

### TAX ON EMPLOYMENT INCOME

#### **6 Nature of charge to tax on employment income**

- (1) The charge to tax on employment income under this Part is a charge to tax on—
  - (a) general earnings, and
  - (b) specific employment income.

The meaning of “employment income”, “general earnings” and “specific employment income” is given in section 7.
- (2) The amount of general earnings or specific employment income which is charged to tax in a particular tax year is set out in section 9.
- (3) The rules in Chapters 4 and 5 of this Part, which are concerned with—
  - (a) the residence and domicile of an employee in a tax year, and
  - (b) the tax year in which amounts are received or remitted to the United Kingdom,
 apply for the purposes of the charge to tax on general earnings but not that on specific employment income.
- (4) The person who is liable for any tax charged on employment income is set out in section 13.
- (5) Employment income is not charged to tax under this Part if it is within the charge to tax under [F<sup>2</sup>Part 2 of ITTOIA 2005 (trading income) by virtue of section 15 of that Act] (divers and diving supervisors).

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### Textual Amendments

- F2** Words in s. 6(5) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 585](#) (with [Sch. 2](#))

## 7 Meaning of “employment income”, “general earnings” and “specific employment income”

- (1) This section gives the meaning for the purposes of the Tax Acts of “employment income”, “general earnings” and “specific employment income”.
- (2) “Employment income” means—
- (a) earnings within Chapter 1 of Part 3,
  - (b) any amount treated as earnings (see subsection (5)), or
  - (c) any amount which counts as employment income (see subsection (6)).
- (3) “General earnings” means—
- (a) earnings within Chapter 1 of Part 3, or
  - (b) any amount treated as earnings (see subsection (5)),
- excluding in each case any exempt income.
- (4) “Specific employment income” means any amount which counts as employment income (see subsection (6)), excluding any exempt income.
- (5) Subsection (2)(b) or (3)(b) refers to any amount treated as earnings under—
- (a) Chapters 7 and 8 of this Part (application of provisions to agency workers and workers under arrangements made by intermediaries),
  - (b) Chapters 2 to 11 of Part 3 (the benefits code),
  - (c) Chapter 12 of Part 3 (payments treated as earnings), or
  - (d) section 262 of CAA 2001 (balancing charges to be given effect by treating them as earnings).
- (6) Subsection (2)(c) or (4) refers to any amount which counts as employment income by virtue of—
- (a) Part 6 (income which is not earnings or share-related),
  - (b) Part 7 [<sup>F3</sup>(income and exemptions relating to securities and securities options)], or
  - (c) any other enactment.

### Textual Amendments

- F3** Words in s. 7(6)(b) substituted (16.4.2003 with effect in accordance with [Sch. 22 para. 17\(2\)](#) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 17\(1\)](#)

## 8 Meaning of “exempt income”

For the purposes of the employment income Parts, an amount of employment income within paragraph (a), (b) or (c) of section 7(2) is “exempt income” if, as a result of any exemption in Part 4 or elsewhere, no liability to income tax arises in respect of it as such an amount.



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## CHAPTER 3

### OPERATION OF TAX CHARGE

#### 9 Amount of employment income charged to tax

- (1) The amount of employment income which is charged to tax under this Part for a particular tax year is as follows.
- (2) In the case of general earnings, the amount charged is the net taxable earnings from an employment in the year.
- (3) That amount is calculated under section 11 by reference to any taxable earnings from the employment in the year (see section 10(2)).
- (4) In the case of specific employment income, the amount charged is the net taxable specific income from an employment for the year.
- (5) That amount is calculated under section 12 by reference to any taxable specific income from the employment for the year (see section 10(3)).
- (6) Accordingly, no amount of employment income is charged to tax under this Part for a particular tax year unless—
  - (a) in the case of general earnings, they are taxable earnings from an employment in that year, or
  - (b) in the case of specific employment income, it is taxable specific income from an employment for that year.

#### 10 Meaning of “taxable earnings” and “taxable specific income”

- (1) This section explains what is meant by “taxable earnings” and “taxable specific income” in the employment income Parts.
- (2) “Taxable earnings from an employment in a tax year are to be determined in accordance with—
  - (a) Chapter 4 of this Part (rules applying to employees resident, ordinarily resident and domiciled in the UK), or
  - (b) Chapter 5 of this Part (rules applying to employees resident, ordinarily resident or domiciled outside the UK).
- (3) “Taxable specific income from an employment for a tax year means the full amount of any specific employment income which, by virtue of Part 6 or 7 or any other enactment, counts as employment income for that year in respect of the employment.

#### 11 Calculation of “net taxable earnings”

- (1) For the purposes of this Part the “net taxable earnings” from an employment in a tax year are given by the formula—

**TE - DE**

where—

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TE means the total amount of any taxable earnings from the employment in the tax year, and

DE means the total amount of any deductions allowed from those earnings under provisions listed in section 327(3) to (5) (deductions from earnings: general).

- (2) If the amount calculated under subsection (1) is negative, the net taxable earnings from the employment in the year are to be taken to be nil instead.
- (3) Relief may be available under section 380(1) of ICTA (set-off against general income)
  - (a) where TE is negative, or
  - (b) in certain exceptional cases where the amount calculated under subsection (1) is negative.
- (4) If a person has more than one employment in a tax year, the calculation under subsection (1) must be carried out in relation to each of the employments.

## 12 Calculation of “net taxable specific income”

- (1) For the purposes of this Part the “net taxable specific income” from an employment for a tax year is given by the formula—

**TSI- DSI**

where—

TSI means the amount of any taxable specific income from the employment for the tax year, and

DSI means the total amount of any deductions allowed from that income under provisions of the Tax Acts not included in the lists in section 327 (3) and (4) (deductions from earnings: general).

- (2) If the amount calculated under subsection (1) is negative, the net taxable specific income from the employment for the year is to be taken to be nil instead.
- (3) If a person has more than one kind of specific employment income from an employment for a tax year, the calculation under subsection (1) must be carried out in relation to each of those kinds of specific employment income; and in such a case the “net taxable specific income” from the employment for that year is the total of all the amounts so calculated.

## 13 Person liable for tax

- (1) The person liable for any tax on employment income under this Part is the taxable person mentioned in subsection (2) or (3).

This is subject to subsection (4).

- (2) If the tax is on general earnings, “the taxable person” is the person to whose employment the earnings relate.

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- (3) If the tax is on specific employment income, “the taxable person” is the person in relation to whom the income is, by virtue of Part 6 or 7 or any other enactment, to count as employment income.
- (4) If the tax is on general earnings received, or remitted to the United Kingdom, after the death of the person to whose employment the earnings relate, the person’s personal representatives are liable for the tax.
- (5) In that event the tax is accordingly to be assessed on the personal representatives and is a debt due from and payable out of the estate.

## CHAPTER 4

### TAXABLE EARNINGS: RULES APPLYING TO EMPLOYEE RESIDENT, ORDINARILY RESIDENT AND DOMICILED IN UK

#### *Taxable earnings*

#### **14 Taxable earnings under this Chapter: introduction**

- (1) This Chapter sets out for the purposes of this Part what are taxable earnings from an employment in a tax year in cases where section 15 (earnings for year when employee resident, ordinarily resident and domiciled in UK) applies to general earnings for a tax year.
- (2) In this Chapter—
  - (a) sections 16 and 17 deal with the year for which general earnings are earned, and
  - (b) sections 18 and 19 deal with the time when general earnings are received.
- (3) In the employment income Parts any reference to the charging provisions of this Chapter is a reference to section 15.

#### *Employees resident, ordinarily resident and domiciled in UK*

#### **15 Earnings for year when employee resident, ordinarily resident and domiciled in UK**

- (1) This section applies to general earnings for a tax year in which the employee is resident, ordinarily resident and domiciled in the United Kingdom.
- (2) The full amount of any general earnings within subsection (1) which are received in a tax year is an amount of “taxable earnings” from the employment in that year.
- (3) Subsection (2) applies—
  - (a) whether the earnings are for that year or for some other tax year, and
  - (b) whether or not the employment is held at the time when the earnings are received.

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*Year for which general earnings are earned*

**16 Meaning of earnings “for” a tax year**

- (1) This section applies for determining whether general earnings are general earnings “for” a particular tax year for the purposes of this Chapter.
- (2) General earnings that are earned in, or otherwise in respect of, a particular period are to be regarded as general earnings for that period.
- (3) If that period consists of the whole or part of a single tax year, the earnings are to be regarded as general earnings “for” that tax year.
- (4) If that period consists of the whole or parts of two or more tax years, the part of the earnings that is to be regarded as general earnings “for” each of those tax years is to be determined on a just and reasonable apportionment.
- (5) This section does not apply to any amount which is required by a provision of Part 3 to be treated as earnings for a particular tax year.

**17 Treatment of earnings for year in which employment not held**

- (1) This section applies for the purposes of this Chapter in a case where general earnings from an employment would otherwise fall to be regarded as general earnings for a tax year in which the employee does not hold the employment.
- (2) If that year falls before the first tax year in which the employment is held, the earnings are to be treated as general earnings for that first tax year.
- (3) If that year falls after the last tax year in which the employment was held, the earnings are to be treated as general earnings for that last tax year.
- (4) This section does not apply in connection with determining the year for which amounts are to be treated as earnings under Chapters 2 to 11 of Part 3 (the benefits code).

*When general earnings are received*

**18 Receipt of money earnings**

- (1) General earnings consisting of money are to be treated for the purposes of this Chapter as received at the earliest of the following times—

*Rule 1*

The time when payment is made of or on account of the earnings.

*Rule 2*

The time when a person becomes entitled to payment of or on account of the earnings.

*Rule 3*

If the employee is a director of a company and the earnings are from employment with the company (whether or not as director), whichever is the earliest of—

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- (a) the time when sums on account of the earnings are credited in the company's accounts or records (whether or not there is any restriction on the right to draw the sums);
  - (b) if the amount of the earnings for a period is determined by the end of the period, the time when the period ends;
  - (c) if the amount of the earnings for a period is not determined until after the period has ended, the time when the amount is determined.
- (2) Rule 3 applies if the employee is a director of the company at any time in the tax year in which the time mentioned falls.
- (3) In this section “director” means—
- (a) in relation to a company whose affairs are managed by a board of directors or similar body, a member of that body,
  - (b) in relation to a company whose affairs are managed by a single director or similar person, that director or person, and
  - (c) in relation to a company whose affairs are managed by the members themselves, a member of the company,
- and includes any person in accordance with whose directions or instructions the directors of the company (as defined above) are accustomed to act.
- (4) For the purposes of subsection (3) a person is not to be regarded as a person in accordance with whose directions or instructions the directors of the company are accustomed to act merely because the directors act on advice given by that person in a professional capacity.
- (5) Where this section applies—
- (a) to a payment on account of general earnings, or
  - (b) to sums on account of general earnings,
- it so applies for the purpose of determining the time when an amount of general earnings corresponding to the amount of that payment or those sums is to be treated as received for the purposes of this Chapter.

## 19 Receipt of non-money earnings

- (1) General earnings not consisting of money are to be treated for the purposes of this Chapter as received at the following times.
- (2) If an amount is treated as earnings for a particular tax year under any of the following provisions, the earnings are to be treated as received in that year—
- section 81 (taxable benefits: cash vouchers),
  - section 94 (taxable benefits: credit-tokens),
  - Chapter 5 of Part 3 (taxable benefits: living accommodation),
  - Chapter 6 of Part 3 (taxable benefits: cars, vans and related benefits),
  - Chapter 7 of Part 3 (taxable benefits: loans),
  - F4
  - ...
  - F4
  - ...
  - Chapter 10 of Part 3 (taxable benefits: residual liability to charge),
  - section 222 (payments treated as earnings: payments on account of tax where deduction not possible),
  - section 223 (payments treated as earnings: payments on account of director's tax).

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- (3) If an amount is treated as earnings under section 87 (taxable benefits: non-cash vouchers), the earnings are to be treated as received in the tax year mentioned in section 88.
- (4) If subsection (2) or (3) does not apply, the earnings are to be treated as received at the time when the benefit is provided.

#### Textual Amendments

- F4** S. 19(2) entries repealed (with effect in accordance with Sch. 22 para. 18(2) of the amending Act) by Finance Act 2003 (c. 14), Sch. 22 para. 18(1), **Sch. 43 Pt. 3(4)**

## CHAPTER 5

### TAXABLE EARNINGS: RULES APPLYING TO EMPLOYEE RESIDENT, ORDINARILY RESIDENT OR DOMICILED OUTSIDE UK

#### *Taxable earnings*

#### **20 Taxable earnings under this Chapter: introduction**

- (1) This Chapter sets out for the purposes of this Part what are taxable earnings from an employment in a tax year in cases where any of the following sections applies to general earnings for a tax year—
- (a) section 21 (earnings for year when employee resident and ordinarily resident, but not domiciled, in UK, except chargeable overseas earnings),
  - (b) section 22 (chargeable overseas earnings for year when employee resident and ordinarily resident, but not domiciled, in UK),
  - (c) section 25 (UK-based earnings for year when employee resident, but not ordinarily resident, in UK),
  - (d) section 26 (foreign earnings for year when employee resident, but not ordinarily resident, in UK),
  - (e) section 27 (UK-based earnings for year when employee not resident in UK).
- (2) In this Chapter—
- (a) sections 29 and 30 deal with the year for which general earnings are earned,
  - (b) sections 31 to 34 deal with the time when general earnings are received or remitted,
  - (c) sections 35 to 37 deal with relief for delayed remittances, and
  - (d) sections 38 to 41 deal with the place where the duties of an employment are performed.
- (3) In the employment income Parts any reference to the charging provisions of this Chapter is a reference to any of the sections listed in subsection (1).

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### *Employees resident and ordinarily resident in UK*

#### **21 Earnings for year when employee resident and ordinarily resident, but not domiciled, in UK, except chargeable overseas earnings**

- (1) This section applies to general earnings for a tax year in which the employee is resident and ordinarily resident, but not domiciled, in the United Kingdom except to the extent that they are chargeable overseas earnings for that year.
- (2) The full amount of any general earnings within subsection (1) which are received in a tax year is an amount of “taxable earnings” from the employment in that year.
- (3) Subsection (2) applies—
  - (a) whether the earnings are for that year or for some other tax year, and
  - (b) whether or not the employment is held at the time when the earnings are received.
- (4) Section 23 applies for calculating how much of an employee’s general earnings are “chargeable overseas earnings” for a tax year, and are therefore within section 22(1) rather than subsection (1) above.

#### **22 Chargeable overseas earnings for year when employee resident and ordinarily resident, but not domiciled, in UK**

- (1) This section applies to general earnings for a tax year in which the employee is resident and ordinarily resident, but not domiciled, in the United Kingdom to the extent that the earnings are chargeable overseas earnings for that year.
- (2) The full amount of any general earnings within subsection (1) which are remitted to the United Kingdom in a tax year is an amount of “taxable earnings” from the employment in that year.
- (3) Subsection (2) applies—
  - (a) whether the earnings are for that year or for some other tax year, and
  - (b) whether or not the employment is held at the time when the earnings are remitted;but that subsection has effect subject to any relief given under section 35 (delayed remittances: claim for relief).
- (4) Section 23 applies for calculating how much of an employee’s general earnings are “chargeable overseas earnings” for a tax year, and are therefore within subsection (1) rather than section 21(1).
- (5) Where any chargeable overseas earnings are taxable earnings under subsection (2), any deduction taken into account under section 23(3) in calculating the amount of the chargeable overseas earnings—
  - (a) cannot then be deducted under section 11 from those taxable earnings, but
  - (b) may be deducted under that section from any taxable earnings under section 21.

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## **23 Calculation of “chargeable overseas earnings”**

- (1) This section applies for calculating how much of an employee’s general earnings for a tax year are “chargeable overseas earnings” for the purposes of sections 21 and 22.
- (2) General earnings for a tax year are “overseas earnings” for that year if—
  - (a) in that year the employee is resident and ordinarily resident, but not domiciled, in the United Kingdom,
  - (b) the employment is with a foreign employer, and
  - (c) the duties of the employment are performed wholly outside the United Kingdom.
- (3) To calculate the amount of “chargeable overseas earnings” for a tax year—

### *Step 1*

Identify the full amount of the overseas earnings for that year under subsection (2).

### *Step 2*

Subtract any amounts that would (assuming they were taxable earnings) be allowed to be deducted from those earnings under—

- (a) section 232 or Part 5 (deductions allowed from earnings),
- (b) section 592(7) of ICTA (contributions to exempt approved schemes),
- (c) section 594 of ICTA (contributions to exempt statutory schemes), or
- (d) section 262 of CAA 2001 (capital allowances to be given effect by treating them as deductions from earnings).

### *Step 3*

Apply any limit imposed by section 24 (limit where duties of associated employment performed in UK).

The result is the chargeable overseas earnings for the tax year.

## **24 Limit on chargeable overseas earnings where duties of associated employment performed in UK**

- (1) This section imposes a limit on how much of an employee’s general earnings are chargeable overseas earnings for a tax year under section 23 if—
  - (a) in that year the employee holds associated employments as well as the employment to which subsection (2) of that section applies (“the relevant employment”), and
  - (b) the duties of the associated employments are not performed wholly outside the United Kingdom.
- (2) The limit is the proportion of the aggregate earnings for that year from all the employments concerned that is reasonable having regard to—
  - (a) the nature of and time devoted to each of the following—
    - (i) the duties performed outside the United Kingdom, and
    - (ii) those performed in the United Kingdom, and
  - (b) all other relevant circumstances.



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- (3) For the purposes of subsection (2) “the aggregate earnings for a year from all the employments concerned” means the amount produced by aggregating the full amount of earnings from each of those employments for the year mentioned in subsection (1) so far as remaining after subtracting any amounts of the kind mentioned in step 2 in section 23(3).
- (4) In this section—
- (a) “the employments concerned” means the relevant employment and the associated employments;
  - (b) “associated employments” means employments with the same employer or with associated employers.
- (5) The following rules apply to determine whether employers are associated—
- Rule A*
- An individual is associated with a partnership or company if that individual has control of the partnership or company.
- Rule B*
- A partnership is associated with another partnership or with a company if one has control of the other or both are under the control of the same person or persons.
- Rule C*
- A company is associated with another company if one has control of the other or both are under the control of the same person or persons.
- (6) In subsection (5)—
- (a) in rules A and B “control” has the meaning given by section 840 of ICTA (in accordance with section 719 of this Act), and
  - (b) in rule C “control” means control within the meaning of section 416 of ICTA (meaning of expressions relating to close companies).
- (7) If an amount of chargeable overseas earnings is reduced under step 3 in section 23(3) as a result of applying any limit imposed by this section, the amount of general earnings corresponding to the reduction remains an amount of general earnings within section 21(1).

*Employees resident but not ordinarily resident in UK*

**25 UK-based earnings for year when employee resident, but not ordinarily resident, in UK**

- (1) This section applies to general earnings for a tax year in which the employee is resident but not ordinarily resident in the United Kingdom if they are—
- (a) general earnings in respect of duties performed in the United Kingdom, or
  - (b) general earnings from overseas Crown employment subject to United Kingdom tax.
- (2) The full amount of any general earnings within subsection (1) which are received in a tax year is an amount of “taxable earnings” from the employment in that year.

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- (3) Subsection (2) applies—
- (a) whether the earnings are for that year or for some other tax year, and
  - (b) whether or not the employment is held at the time when the earnings are received.
- (4) Section 28 explains what is meant by “general earnings from overseas Crown employment subject to United Kingdom tax”.
- 26 Foreign earnings for year when employee resident, but not ordinarily resident, in UK**
- (1) This section applies to general earnings for a tax year in which the employee is resident, but not ordinarily resident, in the United Kingdom if they are neither—
- (a) general earnings in respect of duties performed in the United Kingdom, nor
  - (b) general earnings from overseas Crown employment subject to United Kingdom tax.
- (2) The full amount of any general earnings within subsection (1) which are remitted to the United Kingdom in a tax year is an amount of “taxable earnings” from the employment in that year.
- (3) Subsection (2) applies—
- (a) whether the earnings are for that year or for some other tax year, and
  - (b) whether or not the employment is held at the time when the earnings are remitted;
- but that subsection has effect subject to any relief given under section 35 (delayed remittances: claim for relief).
- (4) Section 28 explains what is meant by “general earnings from overseas Crown employment subject to United Kingdom tax”.

*Employees not resident in UK*

- 27 UK-based earnings for year when employee not resident in UK**
- (1) This section applies to general earnings for a tax year in which the employee is not resident in the United Kingdom if they are—
- (a) general earnings in respect of duties performed in the United Kingdom, or
  - (b) general earnings from overseas Crown employment subject to United Kingdom tax.
- (2) The full amount of any general earnings within subsection (1) which are received in a tax year is an amount of “taxable earnings” from the employment in that year.
- (3) Subsection (2) applies—
- (a) whether the earnings are for that year or for some other tax year, and
  - (b) whether or not the employment is held at the time when the earnings are received.
- (4) Section 28 explains what is meant by “general earnings from overseas Crown employment subject to United Kingdom tax”.

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*Special class of earnings for purposes of sections 25 to 27*

**28 Meaning of “general earnings from overseas Crown employment subject to UK tax”**

- (1) This section explains for the purposes of sections 25 to 27 what is meant by “general earnings from overseas Crown employment subject to United Kingdom tax”.
- (2) “Crown employment” means employment under the Crown—
  - (a) which is of a public nature, and
  - (b) the earnings from which are payable out of the public revenue of the United Kingdom or of Northern Ireland.
- (3) “General earnings from overseas Crown employment” means general earnings from such employment in respect of duties performed outside the United Kingdom.
- (4) Such earnings are to be taken as being “subject to United Kingdom tax” unless they fall within any exception contained in an order under subsection (5).
- (5) The Board of Inland Revenue may make an order excepting from the operation of sections 25(2) and 27(2)—
  - (a) general earnings of any description of employee specified in the order;
  - (b) general earnings from any description of employment so specified.
- (6) The Board may make the order if they consider that such earnings should not be subject to those provisions having regard to the international obligations of Her Majesty’s Government and such other matters as appear to them to be relevant.
- (7) An order may make provision by reference to all or any of the following—
  - (a) the residence or nationality of the employee;
  - (b) whether the employee was engaged in or outside the United Kingdom;
  - (c) the nature of the post, the rate of remuneration and any other terms and conditions applying to it.
- (8) Subsection (7) does not affect the generality of the power to make provision by reference to such factors as the Board consider appropriate.

*Year for which general earnings are earned*

**29 Meaning of earnings “for” a tax year**

- (1) This section applies for determining whether general earnings are general earnings “for” a particular tax year for the purposes of this Chapter.
- (2) General earnings that are earned in, or otherwise in respect of, a particular period are to be regarded as general earnings for that period.
- (3) If that period consists of the whole or part of a single tax year, the earnings are to be regarded as general earnings “for” that tax year.
- (4) If that period consists of the whole or parts of two or more tax years, the part of the earnings that is to be regarded as general earnings “for” each of those tax years is to be determined on a just and reasonable apportionment.

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- (5) This section does not apply to any amount which is required by a provision of Part 3 to be treated as earnings for a particular tax year.

### **30 Treatment of earnings for year in which employment not held**

- (1) This section applies for the purposes of this Chapter in a case where general earnings from an employment would otherwise fall to be regarded as general earnings for a tax year in which the employee does not hold the employment.
- (2) If that year falls before the first tax year in which the employment is held, the earnings are to be treated as general earnings for that first tax year.
- (3) If that year falls after the last tax year in which the employment was held, the earnings are to be treated as general earnings for that last tax year.
- (4) This section does not apply in connection with determining the year for which amounts are to be treated as earnings under Chapters 2 to 11 of Part 3 (the benefits code).

*When general earnings are received or remitted*

### **31 Receipt of money earnings**

- (1) General earnings consisting of money are to be treated for the purposes of this Chapter as received at the earliest of the following times—

*Rule 1*

The time when payment is made of or on account of the earnings.

*Rule 2*

The time when a person becomes entitled to payment of or on account of the earnings.

*Rule 3*

If the employee is a director of a company and the earnings are from employment with the company (whether or not as director), whichever is the earliest of—

- (a) the time when sums on account of the earnings are credited in the company's accounts or records (whether or not there is any restriction on the right to draw the sums);
  - (b) if the amount of the earnings for a period is determined by the end of the period, the time when the period ends;
  - (c) if the amount of the earnings for a period is not determined until after the period has ended, the time when the amount is determined.
- (2) Rule 3 applies if the employee is a director of the company at any time in the tax year in which the time mentioned falls.
- (3) In this section “director” means—
- (a) in relation to a company whose affairs are managed by a board of directors or similar body, a member of that body,
  - (b) in relation to a company whose affairs are managed by a single director or similar person, that director or person, and

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- (c) in relation to a company whose affairs are managed by the members themselves, a member of the company, and includes any person in accordance with whose directions or instructions the directors of the company (as defined above) are accustomed to act.
- (4) For the purposes of subsection (3) a person is not to be regarded as a person in accordance with whose directions or instructions the directors of the company are accustomed to act merely because the directors act on advice given by that person in a professional capacity.
- (5) Where this section applies—
- (a) to a payment on account of general earnings, or
  - (b) to sums on account of general earnings,
- it so applies for the purpose of determining the time when an amount of general earnings corresponding to the amount of that payment or those sums is to be treated as received for the purposes of this Chapter.

## 32 Receipt of non-money earnings

- (1) General earnings not consisting of money are to be treated for the purposes of this Chapter as received at the following times.
- (2) If an amount is treated as earnings for a particular tax year under any of the following provisions, the earnings are to be treated as received in that year—
  - section 81 (taxable benefits: cash vouchers),
  - section 94 (taxable benefits: credit-tokens),
  - Chapter 5 of Part 3 (taxable benefits: living accommodation),
  - Chapter 6 of Part 3 (taxable benefits: cars, vans and related benefits),
  - Chapter 7 of Part 3 (taxable benefits: loans),
  - F5
  - ...
  - F5
  - ...
  - Chapter 10 of Part 3 (taxable benefits: residual liability to charge),
  - section 222 (payments treated as earnings: payments on account of tax where deduction not possible),
  - section 223 (payments treated as earnings: payments on account of director's tax).
- (3) If an amount is treated as earnings under section 87 (taxable benefits: non-cash vouchers), the earnings are to be treated as received in the tax year mentioned in section 88.
- (4) If subsection (2) or (3) does not apply, the earnings are to be treated as received at the time when the benefit is provided.

### Textual Amendments

- F5** S. 32(2) entries repealed (with effect in accordance with Sch. 22 para. 19(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 19\(1\)](#), [Sch. 43 Pt. 3\(4\)](#)

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### **33 Earnings remitted to UK**

- (1) This section explains what is meant for the purposes of this Chapter by general earnings being remitted to the United Kingdom.
- (2) If general earnings are—
  - (a) paid, used, or enjoyed in the United Kingdom, or
  - (b) transmitted or brought to the United Kingdom in any manner or form,
 they are to be treated as remitted to the United Kingdom at the time when they are so paid, used or enjoyed or dealt with as mentioned in paragraph (b).
- (3) If, in the case of an employee who is ordinarily resident in the United Kingdom, general earnings are used outside the United Kingdom to satisfy a UK-linked debt, they are to be treated as remitted to the United Kingdom at the time when they are so used.

This is subject to subsection (5)(b).

- (4) In subsection (3) “UK-linked debt, in relation to an employee, means—
  - (a) a debt for money lent to the employee in the United Kingdom, or for interest on money so lent, or
  - (b) a debt for money lent to the employee outside the United Kingdom and received in the United Kingdom, or
  - (c) a debt incurred for satisfying—
    - (i) a debt falling within paragraph (a) or (b), or
    - (ii) another debt falling within this paragraph.
- (5) In the case of a debt (within subsection (4)(b) or (c)) for money lent to the employee outside the United Kingdom—
  - (a) it does not matter whether the money lent is received in the United Kingdom before or after the general earnings are used to satisfy the debt, but
  - (b) if the money lent is not received in the United Kingdom until after the general earnings are used to satisfy the debt, the general earnings are to be treated as remitted to the United Kingdom at the time when the money lent is received there (instead of at the time provided in subsection (3)).
- (6) In subsections (4) and (5) any reference to money lent being received in the United Kingdom includes a reference to its being brought there.
- (7) Section 34 (further provisions about UK-linked debts) applies for the purposes of subsections (3) to (5).

### **34 Earnings remitted to UK: further provisions about UK-linked debts**

- (1) This section applies for the purposes of the provisions of section 33 which relate to general earnings that are used to satisfy a UK-linked debt.
- (2) General earnings are to be treated as used to satisfy a debt for money lent to a person (“the borrower”) if conditions A and B are met.
- (3) Condition A is that the earnings are dealt with in such a way that the lender holds money or property representing the earnings on behalf of or on account of the borrower in such circumstances that it is available to the lender to satisfy or reduce the debt (by set-off or otherwise).

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- (4) Condition B is that under an arrangement between the borrower and the lender—
- (a) the amount for the time being owed by the borrower to the lender, or
  - (b) the time at which the debt is to be wholly or partly repaid,
- depends in any respect, directly or indirectly, on the amount or value the lender holds on behalf of or on account of the borrower as mentioned in subsection (3).
- (5) If and to the extent that money lent is used to satisfy a debt, the debt for the money lent is to be treated as incurred for satisfying that other debt.
- (6) In this section “lender” includes, in relation to any money lent, any person for the time being entitled to repayment.
- (7) In this section and section 33 “satisfy”, in relation to a debt, means satisfy wholly or in part.

### *Relief for delayed remittances*

## **35 Relief for delayed remittances**

- (1) A person may make a claim for relief under this section for a tax year in respect of delayed remittances from an employment.
- (2) “Delayed remittances” are general earnings of the person which—
- (a) were received in a country or territory outside the United Kingdom before the tax year for which relief is claimed,
  - (b) were not remitted to the United Kingdom until that tax year,
  - (c) could not have been transferred by the person to the United Kingdom before that tax year because of—
    - (i) the laws of the country or territory where they were received,
    - (ii) executive action of its government, or
    - (iii) the impossibility of obtaining there currency (other than the currency of that country or territory) that could be transferred to the United Kingdom, and
  - (d) constitute taxable earnings from the employment in that tax year under section 22(2) or 26(2) (general earnings which are taxable earnings if remitted to UK).
- (3) If a person claims relief for a tax year in respect of delayed remittances from an employment, the amount of the remittances—
- (a) is to be deducted from the person’s general earnings which constitute taxable earnings from the employment in that year under section 22(2) or 26(2); and
  - (b) is instead to constitute taxable earnings from the employment under that provision in one or more earlier tax years in accordance with—
    - (i) subsection (4), or
    - (ii) alternatively, section 36 where an election is made under that section.
- (4) Where this subsection applies—
- (a) the amount referred to in subsection (3)(b) is to be treated as taxable earnings from the employment in the tax year in which it was received, or

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- (b) if it consists of general earnings received in two or more tax years, so much of the amount as was received in each of those years is to be treated as taxable earnings from the employment in that year.

### 36 Election in respect of delayed remittances

- (1) This section applies if—
  - (a) a person (“the claimant”) claims relief under section 35 for a tax year in respect of delayed remittances from an employment, and
  - (b) at the end of that year the claimant had blocked earnings from that employment for one or more previous tax years.
- (2) General earnings are “blocked earnings” for a tax year if they—
  - (a) were received in a country or territory outside the United Kingdom in that year,
  - (b) could not be transferred by the claimant to the United Kingdom in that year because of any of the things mentioned in section 35(2)(c), and
  - (c) would have constituted taxable earnings from the employment in that year under section 22(2) or 26(2) (general earnings which are taxable earnings if remitted to UK) if they had been so transferred.
- (3) The claimant may elect for the purposes of section 35(3)(b) to have the amount of the delayed remittances treated as taxable earnings from the employment in one or more tax years specified in the election.
- (4) A claimant may only specify a particular tax year if—
  - (a) there were blocked earnings of the claimant for that year from the employment, and
  - (b) it is a year prior to the tax year for which relief is claimed.
- (5) If more than one year is specified, the election must indicate the amount which is to be treated as taxable earnings in each of those years.
- (6) However the amount of the delayed remittances which the claimant elects to be treated as taxable earnings in a particular tax year must not exceed—

### BE- PC

where—

BE is the amount of blocked earnings of the claimant for that year from the employment, and

PC is the amount of remittances treated as taxable earnings from the employment in that year as a result of a previous claim by the claimant under section 35.

- (7) An election under this section—
  - (a) must be made as part of the claim under section 35, and
  - (b) is irrevocable.
- (8) A person’s personal representatives may make any election under this section which the person might have made.



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### **37 Claims for relief on delayed remittances**

- (1) A claim under section 35 must be made on or before the fifth anniversary of the normal self-assessment filing date for the tax year for which relief is claimed.
- (2) All adjustments (by way of repayment of tax, assessment or otherwise) are to be made which are necessary to give effect to section 35.
- (3) Those adjustments may be made at any time, despite anything to the contrary in the Income Tax Acts.
- (4) A person's personal representatives may make any claim under section 35 which the person might have made.
- (5) If a person dies—
  - (a) any tax paid by the person and repayable because of a claim under section 35 is to be repaid to the person's personal representatives, and
  - (b) the person's personal representatives are liable for any additional tax which arises because of a claim under that section.
- (6) Where subsection (5)(b) applies, the additional tax—
  - (a) is to be assessed on the personal representatives, and
  - (b) is a debt due from and payable out of the estate.

*Place of performance of duties of employment*

### **38 Earnings for period of absence from employment**

- (1) This section applies if a person ordinarily performs the whole or part of the duties of an employment in the United Kingdom.
- (2) General earnings for a period of absence from the employment are to be treated for the purposes of this Chapter as general earnings for duties performed in the United Kingdom except in so far as they would, but for that absence, have been general earnings for duties performed outside the United Kingdom.

### **39 Duties in UK merely incidental to duties outside UK**

- (1) This section applies if in a tax year an employment is in substance one whose duties fall to be performed outside the United Kingdom.
- (2) Duties of the employment performed in the United Kingdom whose performance is merely incidental to the performance of duties outside the United Kingdom are to be treated for the purposes of this Chapter as performed outside the United Kingdom.
- (3) This section does not affect any question as to—
  - (a) where any duties are performed, or
  - (b) whether a person is absent from the United Kingdom,for the purposes of section 378 (deduction from seafarers' earnings: eligibility), and section 383 (place of performance of incidental duties) applies instead.

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#### 40 Duties on board vessel or aircraft

- (1) Duties which a person performs on a vessel engaged on a voyage not extending to a port outside the United Kingdom are to be treated for the purposes of this Chapter as performed in the United Kingdom.
- (2) Duties which a person resident in the United Kingdom performs on a vessel or aircraft engaged—
  - (a) on a voyage or journey beginning or ending in the United Kingdom, or
  - (b) on a part beginning or ending in the United Kingdom of any other voyage or journey,
 are to be treated as performed in the United Kingdom for the purposes of this Chapter.
- (3) Subsection (2) does not, however, apply for the purposes of section 24(1)(b) (limit on chargeable overseas earnings under section 23 where duties of associated employment performed in UK) in relation to any duties of a person’s employment if—
  - (a) the employment is as a seafarer, and
  - (b) the duties are performed on a ship.
- (4) Instead, any duties of the employment which are performed on a ship engaged—
  - (a) on a voyage beginning or ending outside the United Kingdom (but excluding any part of it beginning and ending there), or
  - (b) on a part beginning or ending outside the United Kingdom of any other voyage,
 are to be treated as performed outside the United Kingdom for the purposes of section 24(1)(b).
- (5) For the purposes of subsections (3) and (4)—
  - (a) employment “as a seafarer” means an employment consisting of the performance of duties on a ship or of such duties and others incidental to them;
  - [<sup>F6</sup>(b) “ship” does not include an offshore installation;]
  - (c) the areas designated under section 1(7) of the Continental Shelf Act 1964 (c. 29) are treated as part of the United Kingdom.

#### Textual Amendments

- F6** S. 40(5)(b) substituted (with effect in accordance with Sch. 27 para. 16 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 27 para. 12**

#### 41 Employment in UK sector of continental shelf

- (1) General earnings in respect of duties performed in the UK sector of the continental shelf in connection with exploration or exploitation activities are to be treated for the purposes of this Chapter as general earnings in respect of duties performed in the United Kingdom.
- (2) In this section—
 

“the UK sector of the continental shelf” means the areas designated under section 1(7) of the Continental Shelf Act 1964, and

“exploration or exploitation activities” means activities carried on in connection with the exploration or exploitation of so much of the seabed and

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subsoil and their natural resources as is situated in the United Kingdom or the UK sector of the continental shelf.

## CHAPTER 6

### DISPUTES AS TO DOMICILE OR ORDINARY RESIDENCE

#### 42 Board to determine dispute as to domicile or ordinary residence

- (1) This section applies if, in connection with any of the provisions listed in subsection (3), there is a dispute as to whether a person is or has been ordinarily resident or domiciled in the United Kingdom.
- (2) The question whether the person is or has been so resident or domiciled is to be referred to and decided by the Board of Inland Revenue.
- (3) The provisions referred to in subsection (1) are—
  - section 15 (earnings for year when employee resident, ordinarily resident and domiciled in UK);
  - section 21 (earnings for year when employee resident and ordinarily resident, but not domiciled, in UK, except chargeable overseas earnings);
  - section 22 (chargeable overseas earnings for year when employee resident and ordinarily resident, but not domiciled, in UK);
  - section 23 (calculation of “chargeable overseas earnings”);
  - section 25 (UK-based earnings for year when employee resident, but not ordinarily resident, in UK);
  - section 26 (foreign earnings for year when employee resident, but not ordinarily resident, in UK);
  - section 341 (deduction for travel expenses at start or finish of overseas employment);
  - section 342 (deduction for travel expenses between employments where duties performed abroad);
  - section 355 (deduction for corresponding payments by non-domiciled employees with foreign employers);
  - section 376 (deduction for foreign accommodation and subsistence costs etc. where overseas employment);
  - section 390 (exception for payments to non-approved pension schemes if non-domiciled employees with foreign employers).

#### Modifications etc. (not altering text)

- C1 S. 42 applied by 1988 c. 1, s. 645(4C) (as inserted (6.4.2003 with effect in accordance with s. 723(1) (a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, Sch. 6 para. 93(4) (with Sch. 7))

#### 43 Appeal against Board’s decision on domicile or ordinary residence

- (1) A person who has been given notice of the Board’s decision on a question under section 42 may, if aggrieved by that decision, appeal to the Special Commissioners.

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- (2) The notice of appeal must be given to the Board within 3 months after the date on which the person is given notice of the Board's decision.

**Modifications etc. (not altering text)**

- C2** S. 43 applied by 1988 c. 1, s. 645(4C) (as inserted (6.4.2003 with effect in accordance with s. 723(1)(a)(b) of the amending Act) by *Income Tax (Earnings and Pensions) Act 2003 (c. 1)*, s. 723, Sch. 6 para. 93(4) (with Sch. 7))

## CHAPTER 7

### APPLICATION OF PROVISIONS TO AGENCY WORKERS

#### *Agency workers*

#### 44 Treatment of workers supplied by agencies

- (1) This section applies if—
- (a) an individual (“the worker”) personally provides, or is under an obligation personally to provide, services (which are not excluded services) to another person (“the client”),
  - (b) the services are supplied by or through a third person (“the agency”) under the terms of an agency contract,
  - (c) the worker is subject to (or to the right of) supervision, direction or control as to the manner in which the services are provided, and
  - (d) remuneration receivable under or in consequence of the agency contract does not constitute employment income of the worker apart from this Chapter.
- (2) If this section applies—
- (a) the services which the worker provides, or is obliged to provide, to the client under the agency contract are to be treated for income tax purposes as duties of an employment held by the worker with the agency, and
  - (b) all remuneration receivable under or in consequence of the agency contract (including remuneration which the client pays or provides in relation to the services) is to be treated for income tax purposes as earnings from that employment.

#### 45 Arrangements with agencies

If—

- (a) an individual (“the worker”), with a view to personally providing services (which are not excluded services) to another person (“the client”), enters into arrangements with a third person (“the agency”), and
- (b) the arrangements are such that the services (if and when they are provided) will be treated for income tax purposes under section 44 as duties of an employment held by the worker with the agency,

any remuneration receivable under or in consequence of the arrangements is to be treated for income tax purposes as earnings from that employment.

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#### **46 Cases involving unincorporated bodies etc.**

- (1) Section 44 also applies—
- (a) if the worker personally provides, or is under an obligation to personally provide, the services in question as a partner in a firm or a member of an unincorporated body;
  - (b) if the agency in question is an unincorporated body of which the worker is a member.
- (2) In a case within subsection (1)(a), remuneration receivable under or in consequence of the agency contract is to be treated for income tax purposes as income of the worker and not as income of the firm or body.

#### *Supplementary*

#### **47 Interpretation of this Chapter**

- (1) In this Chapter “agency contract” means a contract made between the worker and the agency under the terms of which the worker is obliged to personally provide services to the client.
- (2) In this Chapter “excluded services” means—
- (a) services as an actor, singer, musician or other entertainer or as a fashion, photographic or artist’s model, or
  - (b) services provided wholly—
    - (i) in the worker’s own home, or
    - (ii) at other premises which are neither controlled or managed by the client nor prescribed by the nature of the services.
- (3) For the purposes of this Chapter “remuneration”—
- (a) does not include anything that would not have constituted employment income of the worker if it had been receivable in connection with an employment apart from this Chapter, but
  - (b) subject to paragraph (a), includes every form of payment, gratuity, profit and benefit.

### **CHAPTER 8**

#### APPLICATION OF PROVISIONS TO WORKERS UNDER ARRANGEMENTS MADE BY INTERMEDIARIES

#### *Application of this Chapter*

#### **48 Scope of this Chapter**

- (1) This Chapter has effect with respect to the provision of services through an intermediary.
- (2) Nothing in this Chapter—
- (a) affects the operation of Chapter 7 of this Part, or

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- (b) applies to payments subject to deduction of tax under section 555 of ICTA (payments to non-resident entertainers and sportsmen).

#### 49 Engagements to which this Chapter applies

(1) This Chapter applies where—

- (a) an individual (“the worker”) personally performs, or is under an obligation personally to perform, services [<sup>F7</sup>for another person] (“the client”),
- (b) the services are provided not under a contract directly between the client and the worker but under arrangements involving a third party (“the intermediary”), and
- (c) the circumstances are such that, if the services were provided under a contract directly between the client and the worker, the worker would be regarded for income tax purposes as an employee of the client.

<sup>F8</sup>(2) .....

- (3) The reference in subsection (1)(b) to a “third party” includes a partnership or unincorporated body of which the worker is a member.
- (4) The circumstances referred to in subsection (1)(c) include the terms on which the services are provided, having regard to the terms of the contracts forming part of the arrangements under which the services are provided.
- (5) In this Chapter “engagement to which this Chapter applies” means any such provision of services as is mentioned in subsection (1).

#### Textual Amendments

**F7** Words in s. 49(1)(a) substituted (with effect in accordance with s. 136(4) of the amending Act) by Finance Act 2003 (c. 14), s. 136(2)

**F8** S. 49(2) repealed (with effect in accordance with s. 136(4) of the amending Act) by Finance Act 2003 (c. 14), s. 136(3)(a), Sch. 43 Pt. 3(1)

#### 50 Worker treated as receiving earnings from employment

(1) If, in the case of an engagement to which this Chapter applies, in any tax year—

- (a) the conditions specified in section 51, 52 or 53 are met in relation to the intermediary, and
- (b) the worker, or an associate of the worker—
- (i) receives from the intermediary, directly or indirectly, a payment or benefit that is not employment income, or
- (ii) has rights which entitle, or which in any circumstances would entitle, the worker or associate to receive from the intermediary, directly or indirectly, any such payment or benefit,

the intermediary is treated as making to the worker, and the worker is treated as receiving, in that year a payment which is to be treated as earnings from an employment (“the deemed employment payment”).

(2) A single payment is treated as made in respect of all engagements in relation to which the intermediary is treated as making a payment to the worker in the tax year.

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- (3) The deemed employment payment is treated as made at the end of the tax year, unless section 57 applies (earlier date of deemed payment in certain cases).
- (4) In this Chapter “the relevant engagements”, in relation to a deemed employment payment, means the engagements mentioned in subsection (2).

## **51 Conditions of liability where intermediary is a company**

- (1) Where the intermediary is a company the conditions are that the intermediary is not an associated company of the client that falls within subsection (2) and either—
  - (a) the worker has a material interest in the intermediary, or
  - (b) the payment or benefit mentioned in section 50(1)(b)—
    - (i) is received or receivable by the worker directly from the intermediary, and
    - (ii) can reasonably be taken to represent remuneration for services provided by the worker to the client.
- (2) An associated company of the client falls within this subsection if it is such a company by reason of the intermediary and the client being under the control—
  - (a) of the worker, or
  - (b) of the worker and other persons.
- (3) A worker is treated as having a material interest in a company if—
  - (a) the worker, alone or with one or more associates of the worker, or
  - (b) an associate of the worker, with or without other such associates, has a material interest in the company.
- (4) For this purpose a material interest means—
  - (a) beneficial ownership of, or the ability to control, directly or through the medium of other companies or by any other indirect means, more than 5% of the ordinary share capital of the company; or
  - (b) possession of, or entitlement to acquire, rights entitling the holder to receive more than 5% of any distributions that may be made by the company; or
  - (c) where the company is a close company, possession of, or entitlement to acquire, rights that would in the event of the winding up of the company, or in any other circumstances, entitle the holder to receive more than 5% of the assets that would then be available for distribution among the participators.
- (5) In subsection (4)(c) “participator” has the meaning given by section 417(1) of ICTA.

## **52 Conditions of liability where intermediary is a partnership**

- (1) Where the intermediary is a partnership the conditions are as follows.
- (2) In relation to any payment or benefit received or receivable by the worker as a member of the partnership the conditions are—
  - (a) that the worker, alone or with one or more relatives, is entitled to 60% or more of the profits of the partnership; or
  - (b) that most of the profits of the partnership concerned derive from the provision of services under engagements to which this Chapter applies—
    - (i) to a single client, or

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- (ii) to a single client together with associates of that client; or
- (c) that under the profit sharing arrangements the income of any of the partners is based on the amount of income generated by that partner by the provision of services under engagements to which this Chapter applies.

In paragraph (a) “relative” means husband or wife, parent or child or remoter relation in the direct line, or brother or sister.

- (3) In relation to any payment or benefit received or receivable by the worker otherwise than as a member of the partnership, the conditions are that the payment or benefit—
  - (a) is received or receivable by the worker directly from the intermediary, and
  - (b) can reasonably be taken to represent remuneration for services provided by the worker to the client.

### **53 Conditions of liability where intermediary is an individual**

Where the intermediary is an individual the conditions are that the payment or benefit—

- (a) is received or receivable by the worker directly from the intermediary, and
- (b) can reasonably be taken to represent remuneration for services provided by the worker to the client.

#### *The deemed employment payment*

### **54 Calculation of deemed employment payment**

- (1) The amount of the deemed employment payment for a tax year (“the year”) is the amount resulting from the following steps—

#### *Step 1*

Find (applying section 55) the total amount of all payments and benefits received by the intermediary in the year in respect of the relevant engagements, and reduce that amount by 5%.

#### *Step 2*

Add (applying that section) the amount of any payments and benefits received by the worker in the year in respect of the relevant engagements, otherwise than from the intermediary, that—

- (a) are not chargeable to income tax as employment income, and
- (b) would be so chargeable if the worker were employed by the client.

#### *Step 3*

Deduct (applying Chapters 1 to 5 of Part 5) the amount of any expenses met in the year by the intermediary that would have been deductible from the taxable earnings from the employment if—

- (a) the worker had been employed by the client, and
- (b) the expenses had been met by the worker out of those earnings.

If the result at this or any later point is nil or a negative amount, there is no deemed employment payment.



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#### *Step 4*

Deduct the amount of any capital allowances in respect of expenditure incurred by the intermediary that could have been deducted from employment income under section 262 of CAA 2001 (employments and offices) if the worker had been employed by the client and had incurred the expenditure.

#### *Step 5*

Deduct any contributions made in the year for the benefit of the worker by the intermediary to a scheme approved under Chapter 1 or 4 of Part 14 of ICTA that if made by an employer for the benefit of an employee would not be chargeable to income tax as income of the employee.

This does not apply to excess contributions made and later repaid.

#### *Step 6*

Deduct the amount of any employer's national insurance contributions paid by the intermediary for the year in respect of the worker.

#### *Step 7*

Deduct the amount of any payments and benefits received in the year by the worker from the intermediary—

- (a) in respect of which the worker is chargeable to income tax as employment income, and
- (b) which do not represent items in respect of which a deduction was made under step 3.

#### *Step 8*

Assume that the result of step 7 represents an amount together with employer's national insurance contributions on it, and deduct what (on that assumption) would be the amount of those contributions.

The result is the deemed employment payment.

- (2) If [F9 section 61 of the Finance Act 2004] applies (sub-contractors in the construction industry: payments to be made under deduction), the intermediary is treated for the purposes of step 1 of subsection (1) as receiving the amount that would have been received had no deduction been made under that section.
- (3) In step 3 of subsection (1), the reference to expenses met by the intermediary includes—
  - (a) expenses met by the worker and reimbursed by the intermediary, and
  - (b) where the intermediary is a partnership and the worker is a member of the partnership, expenses met by the worker for and on behalf of the partnership.
- (4) In step 3 of subsection (1), the expenses deductible include the amount of any mileage allowance relief for the year which the worker would have been entitled to in respect of the use of a vehicle falling within subsection (5) if—
  - (a) the worker had been employed by the client, and
  - (b) the vehicle had not been a company vehicle (within the meaning of Chapter 2 of Part 4).

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- (5) A vehicle falls within this subsection if—
- (a) it is provided by the intermediary for the worker, or
  - (b) where the intermediary is a partnership and the worker is a member of the partnership, it is provided by the worker for the purposes of the business of the partnership.
- (6) Where, on the assumptions mentioned in paragraphs (a) and (b) of step 3 of subsection (1), the deductibility of the expenses is determined under sections 337 to 342 (travel expenses), the duties performed under the relevant engagements are treated as duties of a continuous employment with the intermediary.
- (7) In step 7 of subsection (1), the amounts deductible include any payments received in the year from the intermediary that—
- (a) are exempt from income tax by virtue of section 229 or 233 (mileage allowance payments and passenger payments), and
  - (b) do not represent items in respect of which a deduction was made under step 3.
- (8) For the purposes of subsection (1) any necessary apportionment is to be made on a just and reasonable basis of amounts received by the intermediary that are referable—
- (a) to the services of more than one worker, or
  - (b) partly to the services of the worker and partly to other matters.

#### Textual Amendments

- F9** Words in s. 54(2) substituted (with effect in accordance with s. 77 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 12 para. 17\(2\)](#)

## 55 Application of rules relating to earnings from employment

- (1) The following provisions apply in relation to the calculation of the deemed employment payment.
- (2) A “payment or benefit” means anything that, if received by an employee for performing the duties of an employment, would be earnings from the employment.
- (3) The amount of a payment or benefit is taken to be—
- (a) in the case of a payment or cash benefit, the amount received, and
  - (b) in the case of a non-cash benefit, the cash equivalent of the benefit.
- (4) The cash equivalent of a non-cash benefit is taken to be—
- (a) the amount that would be earnings if the benefit were earnings from an employment, or
  - (b) in the case of living accommodation, whichever is the greater of that amount and the cash equivalent determined in accordance with section 398(2).
- (5) A payment or benefit is treated as received—
- (a) in the case of a payment or cash benefit, when payment is made of or on account of the payment or benefit;
  - (b) in the case of a non-cash benefit that is calculated by reference to a period within the tax year, at the end of that period;

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- (c) in the case of a non-cash benefit that is not so calculated, when it would have been treated as received for the purposes of Chapter 4 or 5 of this Part (see section 19 or 32) if—
  - (i) the worker had been an employee, and
  - (ii) the benefit had been provided by reason of the employment.

## 56 Application of Income Tax Acts in relation to deemed employment

- (1) The Income Tax Acts (in particular, the PAYE provisions) apply in relation to the deemed employment payment as follows.
- (2) They apply as if—
  - (a) the worker were employed by the intermediary, and
  - (b) the relevant engagements were undertaken by the worker in the course of performing the duties of that employment.
- (3) The deemed employment payment is treated in particular—
  - (a) as taxable earnings from the employment for the purpose of securing that any deductions under Chapters 2 to 6 of Part 5 do not exceed the deemed employment payment; and
  - (b) as taxable earnings from the employment for the purposes of section 232.
- (4) The worker is not chargeable to tax in respect of the deemed employment payment if, or to the extent that, by reason of any combination of the factors mentioned in subsection (5), the worker would not be chargeable to tax if—
  - (a) the client employed the worker,
  - (b) the worker performed the services in the course of that employment, and
  - (c) the deemed employment payment were a payment by the client of earnings from that employment.
- (5) The factors are—
  - (a) the worker being resident, ordinarily resident or domiciled outside the United Kingdom,
  - (b) the client being resident or ordinarily resident outside the United Kingdom, and
  - (c) the services in question being provided outside the United Kingdom.
- (6) Where the intermediary is a partnership or unincorporated association, the deemed employment payment is treated as received by the worker in the worker's personal capacity and not as income of the partnership or association.
- (7) Where—
  - (a) the worker is resident in the United Kingdom, [<sup>F10</sup> and]
  - (b) the services in question are provided in the United Kingdom, <sup>F11</sup>...
  - <sup>F11</sup>(c) .....

the intermediary is treated as having a place of business in the United Kingdom, whether or not it in fact does so.
- (8) The deemed employment payment is treated as relevant earnings of the worker for the purposes of section 644 of ICTA (relevant earnings for purposes of permissible pension contributions).

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### Textual Amendments

- F10** Words in s. 56(7)(a) inserted (with effect in accordance with s. 136(4) of the amending Act) by Finance Act 2003 (c. 14), s. 136(3)(b)(i)
- F11** S. 56(7)(c) and word repealed (with effect in accordance with s. 136(4) of the amending Act) by Finance Act 2003 (c. 14), s. 136(3)(b)(ii), Sch. 43 Pt. 3(1)

### Supplementary provisions

#### 57 Earlier date of deemed employment payment in certain cases

- (1) If in any tax year—
- (a) a deemed employment payment is treated as made, and
  - (b) before the date on which the payment would be treated as made under section 50(2) any relevant event (as defined below) occurs in relation to the intermediary,
- the deemed employment payment for that year is treated as having been made immediately before that event or, if there is more than one, immediately before the first of them.
- (2) Where the intermediary is a company the following are relevant events—
- (a) the company ceasing to trade;
  - (b) where the worker is a member of the company, the worker ceasing to be such a member;
  - (c) where the worker holds an office with the company, the worker ceasing to hold such an office;
  - (d) where the worker is employed by the company, the worker ceasing to be so employed.
- (3) Where the intermediary is a partnership the following are relevant events—
- (a) the dissolution of the partnership or the partnership ceasing to trade or a partner ceasing to act as such;
  - (b) where the worker is employed by the partnership, the worker ceasing to be so employed.
- (4) Where the intermediary is an individual and the worker is employed by the intermediary, it is a relevant event if the worker ceases to be so employed.
- (5) The fact that the deemed employment payment is treated as made before the end of the tax year does not affect what receipts and other matters are taken into account in calculating its amount.

#### 58 Relief in case of distributions by intermediary

- (1) A claim for relief may be made under this section where the intermediary—
- (a) is a company,
  - (b) is treated as making a deemed employment payment in any tax year, and
  - (c) either in that tax year (whether before or after that payment is treated as made), or in a subsequent tax year, makes a distribution (a “relevant distribution”).

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- (2) A claim for relief under this section must be made—
  - (a) by the intermediary by notice to the Inland Revenue, and
  - (b) within 5 years after the 31st January following the tax year in which the distribution is made.
- (3) If on a claim being made the Inland Revenue are satisfied that relief should be given in order to avoid a double charge to tax, they must direct the giving of such relief by way of amending any assessment, by discharge or repayment of tax, or otherwise, as appears to them appropriate.
- (4) Relief under this section is given by setting the amount of the deemed employment payment against the relevant distribution so as to reduce the distribution.
- (5) In the case of more than one relevant distribution, the Inland Revenue must exercise the power conferred by this section so as to secure that so far as practicable relief is given by setting the amount of a deemed employment payment—
  - (a) against relevant distributions of the same tax year before those of other years,
  - (b) against relevant distributions received by the worker before those received by another person, and
  - (c) against relevant distributions of earlier years before those of later years.
- (6) Where the amount of a relevant distribution is reduced under this section, the amount of any associated tax credit is reduced accordingly.

## **59 Provisions applicable to multiple intermediaries**

- (1) The provisions of this section apply where in the case of an engagement to which this Chapter applies the arrangements involve more than one relevant intermediary.
- (2) All relevant intermediaries in relation to the engagement are jointly and severally liable, subject to subsection (3), to account for any amount required under the PAYE provisions to be deducted from a deemed employment payment treated as made by any of them—
  - (a) in respect of that engagement, or
  - (b) in respect of that engagement together with other engagements.
- (3) An intermediary is not so liable if it has not received any payment or benefit in respect of that engagement or any such other engagement as is mentioned in subsection (2)(b).
- (4) Subsection (5) applies where a payment or benefit has been made or provided, directly or indirectly, from one relevant intermediary to another in respect of the engagement.
- (5) In that case, the amount taken into account in relation to any intermediary in step 1 or step 2 of section 54(1) is reduced to such extent as is necessary to avoid double-counting having regard to the amount so taken into account in relation to any other intermediary.
- (6) Except as provided by subsections (2) to (5), the provisions of this Chapter apply separately in relation to each relevant intermediary.
- (7) In this section “relevant intermediary” means an intermediary in relation to which the conditions specified in section 51, 52 or 53 are met.

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## 60 Meaning of “associate”

- (1) In this Chapter “associate”—
- (a) in relation to an individual, has the meaning given by section 417(3) and (4) of ICTA, subject to the following provisions of this section;
  - (b) in relation to a company, means a person connected with the company; and
  - (c) in relation to a partnership, means any associate of a member of the partnership.
- (2) Where an individual has an interest in shares or obligations of the company as a beneficiary of an employee benefit trust, the trustees are not regarded as associates of the individual by reason only of that interest except in the following circumstances.
- (3) The exception is where—
- (a) the individual, either alone or with any one or more associates of the individual, or
  - (b) any associate of the individual, with or without other such associates, has at any time on or after 14th March 1989 been the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control more than 5% of the ordinary share capital of the company.
- (4) In subsection (3) “associate” does not include the trustees of an employee benefit trust as a result only of the individual’s having an interest in shares or obligations of the trust.
- (5) Sections 549 to 554 (attribution of interests in companies to beneficiaries of employee benefit trusts) apply for the purposes of subsection (3) as they apply for the purposes of the provisions listed in section 549(2).
- (6) In this section “employee benefit trust” has the meaning given by sections 550 and 551.

## 61 Interpretation

- (1) In this Chapter—
- “associate” has the meaning given by section 60;
  - “associated company” has the meaning given by section 416 of ICTA;
  - “business” means any trade, profession or vocation and includes a [<sup>F12</sup>UK property business or] Schedule A business;
  - “company” means a body corporate or unincorporated association, and does not include a partnership;
  - “employer’s national insurance contributions” means secondary Class 1 or Class 1A national insurance contributions;
  - “engagement to which this Chapter applies” has the meaning given by section 49(5);
  - “national insurance contributions” means contributions under Part 1 of SSCBA 1992 or Part 1 of SSCB(NI)A 1992;
  - “PAYE provisions” means the provisions of Part 11 or PAYE regulations;
  - “the relevant engagements” has the meaning given by section 50(4).
- (2) References in this Chapter to payments or benefits received or receivable from a partnership or unincorporated association include payments or benefits to which a

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person is or may be entitled in the person's capacity as a member of the partnership or association.

- (3) For the purposes of this Chapter—
- (a) anything done by or in relation to an associate of an intermediary is treated as done by or in relation to the intermediary, and
  - (b) a payment or other benefit provided to a member of an individual's family or household is treated as provided to the individual.
- (4) For the purposes of this Chapter a man and a woman living together as husband and wife are treated as if they were married to each other.

#### Textual Amendments

**F12** Words in s. 61(1) inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 586](#) (with [Sch. 2](#))

## PART 3

### EMPLOYMENT INCOME: EARNINGS AND BENEFITS ETC. TREATED AS EARNINGS

## CHAPTER 1

### EARNINGS

#### 62 Earnings

- (1) This section explains what is meant by “earnings” in the employment income Parts.
- (2) In those Parts “earnings”, in relation to an employment, means—
- (a) any salary, wages or fee,
  - (b) any gratuity or other profit or incidental benefit of any kind obtained by the employee if it is money or money's worth, or
  - (c) anything else that constitutes an emolument of the employment.
- (3) For the purposes of subsection (2) “money's worth” means something that is—
- (a) of direct monetary value to the employee, or
  - (b) capable of being converted into money or something of direct monetary value to the employee.
- (4) Subsection (1) does not affect the operation of statutory provisions that provide for amounts to be treated as earnings (and see section 721(7)).

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## CHAPTER 2

### TAXABLE BENEFITS: THE BENEFITS CODE

#### *The benefits code*

### 63 The benefits code

- (1) In the employment income Parts “the benefits code” means—
- this Chapter,
  - Chapter 3 (expenses payments),
  - Chapter 4 (vouchers and credit-tokens),
  - Chapter 5 (living accommodation),
  - Chapter 6 (cars, vans and related benefits),
  - Chapter 7 (loans),
  - F13
  - ...
  - F13
  - ...
  - Chapter 10 (residual liability to charge), and
  - Chapter 11 (exclusion of lower-paid employments from parts of benefits code).
- (2) If an employment is an excluded employment, the general effect of section 216(1) (provisions not applicable to lower-paid employments) is that only the following Chapters apply to the employment—
- this Chapter,
  - Chapter 4 (vouchers and credit-tokens),
  - Chapter 5 (living accommodation), and
  - Chapter 11 (exclusion of lower-paid employments from parts of benefits code).
- (3) Section 216(5) and (6) explain and restrict the effect of section 216(1).
- (4) In the benefits code “excluded employment” means an employment to which the exclusion in section 216(1) applies.

#### **Textual Amendments**

**F13** S. 63(1) entries repealed (with effect in accordance with Sch. 22 para. 20(2) of the amending Act) by Finance Act 2003 (c. 14), Sch. 22 para. 20(1), **Sch. 43 Pt. 3(4)**

### 64 Relationship between earnings and benefits code

- (1) This section applies if, apart from this section, the same benefit would give rise to two amounts (“A” and “B”)—
- (a) A being an amount of earnings as defined in Chapter 1 of this Part, and
  - (b) B being an amount to be treated as earnings under the benefits code.
- (2) In such a case—
- (a) A constitutes earnings as defined in Chapter 1 of this Part, and
  - (b) the amount (if any) by which B exceeds A is to be treated as earnings under the benefits code.



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(3) This section does not apply in connection with living accommodation to which Chapter 5 of this Part applies.

(4) In that case section 109 applies to determine the relationship between that Chapter and Chapter 1 of this Part.

<sup>F14</sup>(5) .....

<sup>F14</sup>(6) .....

#### Textual Amendments

**F14** S. 64(5)(6) repealed (with effect in accordance with Sch. 22 para. 21(2) of the amending Act) by Finance Act 2003 (c. 14), Sch. 22 para. 21(1), Sch. 43 Pt. 3(4)

### 65 Dispensations relating to benefits within provisions not applicable to lower-paid employment

(1) This section applies for the purposes of the listed provisions where a person (“P”) supplies the Inland Revenue with a statement of the cases and circumstances in which—

- (a) payments of a particular character are made to or for any employees, or
- (b) benefits or facilities of a particular kind are provided for any employees, whether they are employees of P or some other person.

(2) The listed provisions” are the provisions listed in section 216(4) (provisions of the benefits code which do not apply to lower-paid employments).

(3) If the Inland Revenue are satisfied that no additional tax is payable by virtue of the listed provisions by reference to the payments, benefits or facilities mentioned in the statement, they must give P a dispensation under this section.

(4) A “dispensation” is a notice stating that the Inland Revenue agree that no additional tax is payable by virtue of the listed provisions by reference to the payments, benefits or facilities mentioned in the statement supplied by P.

(5) If a dispensation is given under this section, nothing in the listed provisions applies to the payments, or the provision of the benefits or facilities, covered by the dispensation or otherwise has the effect of imposing any additional liability to tax in respect of them.

(6) If in their opinion there is reason to do so, the Inland Revenue may revoke a dispensation by giving a further notice to P.

(7) That notice may revoke the dispensation from—

- (a) the date when the dispensation was given, or
- (b) a later date specified in the notice.

(8) If the notice revokes the dispensation from the date when the dispensation was given—

- (a) any liability to tax that would have arisen if the dispensation had never been given is to be treated as having arisen, and
- (b) P and the employees in question must make all the returns which they would have had to make if the dispensation had never been given.

(9) If the notice revokes the dispensation from a later date—

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- (a) any liability to tax that would have arisen if the dispensation had ceased to have effect on that date is to be treated as having arisen, and
- (b) P and the employees in question must make all the returns which they would have had to make if the dispensation had ceased to have effect on that date.

*General definitions for benefits code*

**66 Meaning of “employment” and related expressions**

- (1) In the benefits code—
  - (a) “employment” means a taxable employment under Part 2, and
  - (b) “employed”, “employee” and “employer” have corresponding meanings.
- (2) Where a Chapter of the benefits code applies in relation to an employee—
  - (a) references in that Chapter to “the employment” are to the employment of that employee, and
  - (b) references in that Chapter to “the employer” are to the employer in respect of that employment.
- (3) For the purposes of the benefits code an employment is a “taxable employment under Part 2” in a tax year if the earnings from the employment for that year are (or would be if there were any) general earnings to which the charging provisions of Chapter 4 or 5 of Part 2 apply.
- (4) In subsection (3)—
  - (a) the reference to an employment includes employment as a director of a company, and
  - (b) “earnings” means earnings as defined in Chapter 1 of this Part.

**67 Meaning of “director” and “full-time working director”**

- (1) In the benefits code “director” means—
  - (a) in relation to a company whose affairs are managed by a board of directors or similar body, a member of that body,
  - (b) in relation to a company whose affairs are managed by a single director or similar person, that director or person, and
  - (c) in relation to a company whose affairs are managed by the members themselves, a member of the company,
 and includes any person in accordance with whose directions or instructions the directors of the company (as defined above) are accustomed to act.
- (2) For the purposes of subsection (1) a person is not to be regarded as a person in accordance with whose directions or instructions the directors of the company are accustomed to act merely because the directors act on advice given by that person in a professional capacity.
- (3) In the benefits code “full-time working director” means a director who is required to devote substantially the whole of his time to the service of the company in a managerial or technical capacity.

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## **68 Meaning of “material interest” in a company**

- (1) For the purposes of the benefits code a person has a material interest in a company if condition A or B is met.
- (2) Condition A is that the person (with or without one or more associates) or any associate of that person (with or without one or more such associates) is—
  - (a) the beneficial owner of, or
  - (b) able to control, directly or through the medium of other companies or by any other indirect means,  
more than 5% of the ordinary share capital of the company.
- (3) Condition B is that, in the case of a close company, the person (with or without one or more associates) or any associate of that person (with or without one or more such associates), possesses or is entitled to acquire, such rights as would—
  - (a) in the event of the winding-up of the company, or
  - (b) in any other circumstances,  
give an entitlement to receive more than 5% of the assets which would then be available for distribution among the participants.
- (4) In this section—

“associate” has the meaning given by section 417(3) of ICTA except that, for this purpose, “relative” in section 417(3) has the meaning given by subsection (5) below, and

“participator” has the meaning given by section 417(1) of ICTA.
- (5) For the purposes of this section a person (“A”) is a relative of another (“B”) if A is—
  - (a) B’s spouse,
  - (b) a parent, child or remoter relation in the direct line either of B or of B’s spouse,
  - (c) a brother or sister of B or of B’s spouse, or
  - (d) the spouse of a person falling within paragraph (b) or (c).

## **69 Extended meaning of “control”**

- (1) The definition of “control” in section 840 of ICTA (which is applied for the purposes of this Act by section 719) is extended as follows.
- (2) For the purposes of the benefits code that definition applies (with the necessary modifications) in relation to an unincorporated association as it applies in relation to a body corporate.

## **CHAPTER 3**

### **TAXABLE BENEFITS: EXPENSES PAYMENTS**

## **70 Sums in respect of expenses**

- (1) This Chapter applies to a sum paid to an employee in a tax year if the sum—
  - (a) is paid to the employee in respect of expenses, and
  - (b) is so paid by reason of the employment.

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- (2) This Chapter applies to a sum paid away by an employee in a tax year if the sum—
  - (a) was put at the employee's disposal in respect of expenses,
  - (b) was so put by reason of the employment, and
  - (c) is paid away by the employee in respect of expenses.
- (3) For the purposes of this Chapter it does not matter whether the employment is held at the time when the sum is paid or paid away so long as it is held at some point in the tax year in which the sum is paid or paid away.
- (4) References in this Chapter to an employee accordingly include a prospective or former employee.
- (5) This Chapter does not apply to the extent that the sum constitutes earnings from the employment by virtue of any other provision.

## **71 Meaning of paid or put at disposal by reason of the employment**

- (1) If an employer pays a sum in respect of expenses to an employee it is to be treated as paid by reason of the employment unless—
  - (a) the employer is an individual, and
  - (b) the payment is made in the normal course of the employer's domestic, family or personal relationships.
- (2) If an employer puts a sum at an employee's disposal in respect of expenses it is to be treated as put at the employee's disposal by reason of the employment unless—
  - (a) the employer is an individual, and
  - (b) the sum is put at the employee's disposal in the normal course of the employer's domestic, family or personal relationships.

## **72 Sums in respect of expenses treated as earnings**

- (1) If this Chapter applies to a sum, the sum is to be treated as earnings from the employment for the tax year in which it is paid or paid away.
- (2) Subsection (1) does not prevent the making of a deduction allowed under any of the provisions listed in subsection (3).
- (3) The provisions are—
  - section 336 (deductions for expenses: the general rule);
  - section 337 (travel in performance of duties);
  - section 338 (travel for necessary attendance);
  - section 340 (travel between group employments);
  - section 341 (travel at start or finish of overseas employment);
  - section 342 (travel between employments where duties performed abroad);
  - section 343 (deduction for professional membership fees);
  - section 344 (deduction for annual subscriptions);
  - section 346 (deduction for employee liabilities);
  - section 351 (expenses of ministers of religion);
  - section 353 (deductions from earnings charged on remittance).

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## CHAPTER 4

### TAXABLE BENEFITS: VOUCHERS AND CREDIT-TOKENS

#### *Cash vouchers: introduction*

#### **73 Cash vouchers to which this Chapter applies**

- (1) This Chapter applies to a cash voucher provided for an employee by reason of the employment which is received by the employee.
- (2) A cash voucher provided for an employee by the employer is to be regarded as provided by reason of the employment unless—
  - (a) the employer is an individual, and
  - (b) the provision is made in the normal course of the employer’s domestic, family or personal relationships.
- (3) A cash voucher provided for an employee and appropriated to the employee—
  - (a) by attaching it to a card held for the employee, or
  - (b) in any other way,is to be treated for the purposes of this Chapter as having been received by the employee at the time when it is appropriated.

#### **74 Provision for, or receipt by, member of employee’s family**

For the purposes of this Chapter any reference to a cash voucher being provided for or received by an employee includes a reference to it being provided for or received by a member of the employee’s family.

#### *Meaning of “cash voucher”*

#### **75 Meaning of “cash voucher”**

- (1) In this Chapter “cash voucher” means a voucher, stamp or similar document capable of being exchanged for a sum of money which is—
  - (a) greater than,
  - (b) equal to, or
  - (c) not substantially less than,the expense incurred by the person at whose cost the voucher, stamp or similar document is provided.
- (2) For the purposes of subsection (1) it does not matter whether the document—
  - (a) is also capable of being exchanged for goods or services;
  - (b) is capable of being exchanged singly or together with other vouchers, stamps, or documents;
  - (c) is capable of being exchanged immediately or only after a time.
- (3) Subsection (1) is subject to section 76 (sickness benefits-related voucher).

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## 76 **Sickness benefits-related voucher**

- (1) This section applies where—
- (a) the expense incurred by the person at whose cost a voucher, stamp or similar document is provided (“the provision expense”) includes costs to that person of providing sickness benefits (“sickness benefits costs”),
  - (b) the voucher, stamp or document would be a cash voucher (apart from this section) but for the fact that the sum of money for which it is capable of being exchanged (“the exchange sum”) is substantially less than the provision expense, and
  - (c) the whole or part of the difference between the exchange sum and the provision expense represents the sickness benefits costs.
- (2) The voucher, stamp or document is a cash voucher within the meaning of this Chapter if—

$$E = PE - D$$

or

$$E \text{ is not substantially less than } PE - D$$

where—

E is the exchange sum,

PE is the provision expense, and

D is the amount of the difference between E and PE which represents the sickness benefits costs.

- (3) In this section “sickness benefits” mean benefits in connection with sickness, personal injury or death.

## 77 **Apportionment of cost of provision of voucher**

If a person incurs expense in or in connection with the provision of vouchers, stamps or similar documents for two or more employees as members of a group or class, the expense incurred in respect of one of them is to be such part of that expense as is just and reasonable.

*Cash vouchers: exceptions*

## 78 **Voucher made available to public generally**

This Chapter does not apply to a cash voucher if—

- (a) it is of a kind made available to the public generally, and
- (b) it is provided to the employee or a member of the employee’s family on no more favourable terms than to the public generally.

## 79 **Voucher issued under approved scheme**

- (1) This Chapter does not apply to a cash voucher received by an employee if—

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- (a) it is issued under a scheme, and
  - (b) at the time when it is received the scheme is a scheme approved by the Inland Revenue for the purposes of this section.
- (2) The Inland Revenue must not approve a scheme for the purposes of this section unless they are satisfied that it is practicable for income tax in respect of all payments made in exchange for vouchers issued under the scheme to be deducted in accordance with PAYE regulations.

## **80 Vouchers where payment of sums exempt from tax**

This Chapter does not apply to a cash voucher if it is—

- (a) a document intended to enable a person to obtain payment of a sum which would not have constituted employment income if paid to the person directly, or
- (b) a savings certificate where the accumulated interest payable in respect of it is exempt from tax (or would be so exempt if certain conditions were met).

*Benefit of cash voucher treated as earnings*

## **81 Benefit of cash voucher treated as earnings**

- (1) The cash equivalent of the benefit of a cash voucher to which this Chapter applies is to be treated as earnings from the employment for the tax year in which the voucher is received by the employee.
- (2) The cash equivalent is the sum of money for which the voucher is capable of being exchanged.

*Non-cash vouchers: introduction*

## **82 Non-cash vouchers to which this Chapter applies**

- (1) This Chapter applies to a non-cash voucher provided for an employee by reason of the employment which is received by the employee.
- (2) A non-cash voucher provided for an employee by the employer is to be regarded as provided by reason of the employment unless—
  - (a) the employer is an individual, and
  - (b) the provision is made in the normal course of the employer's domestic, family or personal relationships.
- (3) A non-cash voucher provided for an employee and appropriated to the employee—
  - (a) by attaching it to a card held for the employee, or
  - (b) in any other way,is to be treated for the purposes of this Chapter as having been received by the employee at the time when it is appropriated.

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### 83 Provision for, or receipt by, member of employee's family

For the purposes of this Chapter any reference to a non-cash voucher being provided for or received by an employee includes a reference to it being provided for or received by a member of the employee's family.

*Meaning of "non-cash voucher"*

### 84 Meaning of "non-cash voucher"

- (1) In this Chapter "non-cash voucher" means—
- (a) a voucher, stamp or similar document or token which is capable of being exchanged for money, goods or services,
  - [<sup>F15</sup>(ab) a childcare voucher,]
  - (b) a transport voucher, or
  - (c) a cheque voucher,
- but does not include a cash voucher.
- (2) For the purposes of subsection (1)(a) it does not matter whether the document or token is capable of being exchanged—
- (a) singly or together with other vouchers, stamps, documents or tokens;
  - (b) immediately or only after a time.
- [<sup>F16</sup>(2A) In this Chapter "childcare voucher" means a voucher, stamp or similar document or token intended to enable a person to obtain the provision of care for a child (whether or not in exchange for it).]
- (3) In this Chapter "transport voucher" means a ticket, pass or other document or token intended to enable a person to obtain passenger transport services (whether or not in exchange for it).
- (4) In this Chapter "cheque voucher" means a cheque—
- (a) provided for an employee, and
  - (b) intended for use by the employee wholly or mainly for payment for—
    - (i) particular goods or services, or
    - (ii) goods or services of one or more particular classes;
 and, in relation to a cheque voucher, references to a voucher being exchanged for goods or services are to be read accordingly.

#### Textual Amendments

**F15** S. 84(1)(ab) inserted (with effect in accordance with s. 78(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 13 para. 2\(2\)\(a\)](#)

**F16** S. 84(2A) inserted (with effect in accordance with s. 78(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 13 para. 2\(2\)\(b\)](#)



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### *Non-cash voucher: exceptions*

#### **85 Non-cash voucher made available to public generally**

This Chapter does not apply to a non-cash voucher if—

- (a) it is of a kind made available to the public generally, and
- (b) it is provided to the employee or a member of the employee's family on no more favourable terms than to the public generally.

#### **86 Transport vouchers under pre-26th March 1982 arrangements**

- (1) This Chapter does not apply to a transport voucher provided for an employee of a passenger transport undertaking under arrangements in operation on 25th March 1982 which meet the condition in subsection (2).
- (2) The condition is that the arrangements are intended to enable the employee or a member of the employee's family to obtain passenger transport services provided by—
  - (a) the employer,
  - (b) a subsidiary of the employer,
  - (c) a body corporate of which the employer is a subsidiary, or
  - (d) another passenger transport undertaking.

(3) In this section—

“passenger transport undertaking” means an undertaking whose business consists wholly or mainly in the carriage of passengers or a subsidiary of such an undertaking, and

“subsidiary” means a wholly-owned subsidiary within the meaning of section 736 of the Companies Act 1985 (c. 6).

### *Benefit of non-cash voucher treated as earnings*

#### **87 Benefit of non-cash voucher treated as earnings**

- (1) The cash equivalent of the benefit of a non-cash voucher to which this Chapter applies is to be treated as earnings from the employment for the tax year in which the voucher is received by the employee.
- (2) The cash equivalent is the difference between—
  - (a) the cost of provision, and
  - (b) any part of that cost made good by the employee to the person incurring it.
- (3) In this Chapter the “cost of provision” means, in relation to a non-cash voucher, the expense incurred in or in connection with the provision of—
  - (a) the voucher, and
  - (b) the money, goods or services for which it is capable of being exchanged, by the person at whose cost they are provided.

[<sup>F17</sup>(3A) In the case of a childcare voucher, the reference in subsection (3)(b) to the services for which the voucher is capable of being exchanged is to the provision of care for a child which may be obtained by using it.]

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- (4) In the case of a transport voucher, the reference in subsection (3)(b) to the services for which the voucher is capable of being exchanged is to the passenger transport services which may be obtained by using it.
- (5) If a person incurs expense in or in connection with the provision of non-cash vouchers for two or more employees as members of a group or class, the expense incurred in respect of one of them is to be such part of that expense as is just and reasonable.
- (6) This section is subject to section 89 (reduction for meal vouchers).

#### Textual Amendments

**F17** S. 87(3A) inserted (with effect in accordance with s. 78(2) of the amending Act) by [Finance Act 2004](#) (c. 12), [Sch. 13 para. 2\(3\)](#)

### 88 Year in which earnings treated as received

- (1) In the case of a non-cash voucher other than a cheque voucher, the amount treated as earnings under section 87 is to be treated as received—
  - (a) in the tax year in which the cost of provision is incurred, or
  - (b) if later, in the tax year in which the voucher is received by the employee.
- (2) In the case of a cheque voucher, the amount treated as earnings under section 87 is to be treated as received in the tax year in which the voucher is handed over in exchange for money, goods or services.
- (3) Where a cheque voucher is posted it is to be treated as handed over at the time of posting.

### 89 Reduction for meal vouchers

- (1) This section applies where—
  - (a) the non-cash voucher is a meal voucher,
  - (b) it is provided for an employee for use on a working day, and
  - (c) meal vouchers are made available to all employees (if any) employed by the same employer in lower-paid employment within the meaning of Chapter 11 of this Part (see section 217).
- (2) The total of the cash equivalents of the benefit of any meal vouchers so provided is to be reduced by 15p for each working day for which the vouchers are provided.
- (3) In this section—
 

“meal voucher” means a non-cash voucher which—

  - (a) can only be used to obtain meals,
  - (b) is not transferable, and
  - (c) is not of the kind in respect of which no liability to income tax arises under section 266(3)(e) (subsidised meals), and

“working day” means a day on which the employee is at work.
- (4) Section 83 (references to provision for an employee include provision for a member of the employee’s family) does not apply to subsection (1)(b).

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### *Credit-tokens: introduction*

#### **90 Credit-tokens to which this Chapter applies**

- (1) This Chapter applies to a credit-token provided for an employee by reason of the employment which is used by the employee to obtain money, goods or services.
- (2) A credit-token provided for an employee by the employer is to be regarded as provided by reason of the employment unless—
  - (a) the employer is an individual, and
  - (b) the provision is made in the normal course of the employer’s domestic, family or personal relationships.

#### **91 Provision for, or use by, member of employee’s family**

For the purposes of this Chapter—

- (a) any reference to a credit-token being provided for an employee includes a reference to it being provided for a member of the employee’s family, and
- (b) use of a credit-token by a member of an employee’s family is to be treated as use of the token by the employee.

### *Meaning of “credit-token”*

#### **92 Meaning of “credit-token”**

- (1) In this Chapter “credit-token” means a credit card, debit card or other card, a token, a document or other object given to a person by another person (“X”) who undertakes—
  - (a) on the production of it, to supply money, goods or services on credit, or
  - (b) if a third party (“Y”) supplies money, goods or services on its production, to pay Y for what is supplied.
- (2) A card, token, document or other object can be a credit-token even if—
  - (a) some other action is required in addition to its production in order for the money, goods or services to be supplied;
  - (b) X in paying Y may take a discount or commission.
- (3) For the purposes of this section—
  - (a) the use of an object given by X to operate a machine provided by X is to be treated as its production to X, and
  - (b) the use of an object given by X to operate a machine provided by Y is to be treated as its production to Y.
- (4) A “credit-token” does not include a cash voucher or a non-cash voucher.

### *Credit-tokens: exception*

#### **93 Credit-token made available to public generally**

This Chapter does not apply to a credit-token if—

- (a) it is of a kind made available to the public generally, and

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- (b) it is provided to the employee or a member of the employee's family on no more favourable terms than to the public generally.

*Benefit of credit-token treated as earnings*

**94 Benefit of credit-token treated as earnings**

- (1) On each occasion on which a credit-token to which this Chapter applies is used by the employee in a tax year to obtain money, goods or services, the cash equivalent of the benefit of the token is to be treated as earnings from the employment for that year.
- (2) The cash equivalent is the difference between—
  - (a) the cost of provision, and
  - (b) any part of that cost made good by the employee to the person incurring it.
- (3) In this section the “cost of provision” means the expense incurred—
  - (a) in or in connection with the provision of the money, goods or services obtained on the occasion in question, and
  - (b) by the person at whose cost they are provided.
- (4) If a person incurs expense in or in connection with the provision of credit-tokens for two or more employees as members of a group or class, the expense incurred in respect of one of them is to be such part of that expense as is just and reasonable.

*General supplementary provisions*

**95 Disregard for money, goods or services obtained**

- (1) This section applies if the cash equivalent of the benefit of a cash voucher, a non-cash voucher or a credit-token—
  - (a) is to be treated as earnings from an employee's employment under this Chapter, or
  - (b) would be so treated but for a dispensation given under section 96.
- (2) Money, goods or services obtained—
  - (a) by the employee or another person in exchange for the cash voucher or non-cash voucher, or
  - (b) by the employee or a member of the employee's family by use of the credit-token,
 are to be disregarded for the purposes of the Income Tax Acts.
- (3) But the goods or services are not to be disregarded for the purposes of applying sections 362 and 363 (deductions where non-cash voucher or credit-token provided).
- [<sup>F18</sup>(3A) In the case of a childcare voucher, the reference in subsection (2)(a) to the services obtained in exchange for the voucher is to the provision of care for a child obtained by using it.]
- (4) In the case of a transport voucher, the reference in subsection (2)(a) to the services obtained in exchange for the voucher is to the passenger transport services obtained by using it.

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### Textual Amendments

**F18** S. 95(3A) inserted (with effect in accordance with s. 78(2) of the amending Act) by [Finance Act 2004](#) (c. 12), [Sch. 13 para. 2\(4\)](#)

## 96 Dispensations relating to vouchers or credit-tokens

- (1) This section applies where a person (“P”) supplies the Inland Revenue with a statement of the cases and circumstances in which—
  - (a) cash vouchers,
  - (b) non-cash vouchers, or
  - (c) credit-tokens,are provided for employees whether they are the employees of P or some other person.
- (2) If the Inland Revenue are satisfied that no additional tax is payable by virtue of this Chapter by reference to the vouchers or credit-tokens mentioned in the statement, they must give P a dispensation under this section.
- (3) A “dispensation” is a notice stating that the Inland Revenue agree that no additional tax is payable by virtue of this Chapter by reference to the vouchers or credit-tokens mentioned in the statement supplied by P.
- (4) If a dispensation is given under this section, nothing in this Chapter applies to the provision or use of the vouchers or credit-tokens covered by the dispensation.
- (5) If in their opinion there is reason to do so, the Inland Revenue may revoke a dispensation by giving a further notice to P.
- (6) That notice may revoke the dispensation from—
  - (a) the date when the dispensation was given, or
  - (b) a later date specified in the notice.
- (7) If the notice revokes the dispensation from the date when the dispensation was given—
  - (a) any liability to tax that would have arisen if the dispensation had never been given is to be treated as having arisen, and
  - (b) P and the employees in question must make all the returns which they would have had to make if the dispensation had never been given.
- (8) If the notice revokes the dispensation from a later date—
  - (a) any liability to tax that would have arisen if the dispensation had ceased to have effect on that date is to be treated as having arisen, and
  - (b) P and the employees in question must make all the returns which they would have had to make if the dispensation had ceased to have effect on that date.

*Status: Point in time view as at 07/04/2005.*

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## CHAPTER 5

### TAXABLE BENEFITS: LIVING ACCOMMODATION

#### *Living accommodation*

#### **97 Living accommodation to which this Chapter applies**

- (1) This Chapter applies to living accommodation provided for—
  - (a) an employee, or
  - (b) a member of an employee’s family or household,
 by reason of the employment.
- (2) Living accommodation provided for any of those persons by the employer is to be regarded as provided by reason of the employment unless—
  - (a) the employer is an individual, and
  - (b) the provision is made in the normal course of the employer’s domestic, family or personal relationships.

#### *Exceptions*

#### **98 Accommodation provided by local authority**

- This Chapter does not apply to living accommodation provided for an employee if—
- (a) the employer is a local authority,
  - (b) it is provided for the employee by the authority, and
  - (c) the terms on which it is provided are no more favourable than those on which similar accommodation is provided by the authority for persons who are not their employees but whose circumstances are otherwise similar to those of the employee.

#### **99 Accommodation provided for performance of duties**

- (1) This Chapter does not apply to living accommodation provided for an employee if it is necessary for the proper performance of the employee’s duties that the employee should reside in it.
- (2) This Chapter does not apply to living accommodation provided for an employee if—
  - (a) it is provided for the better performance of the duties of the employment, and
  - (b) the employment is one of the kinds of employment in the case of which it is customary for employers to provide living accommodation for employees.
- (3) But if the accommodation is provided by a company and the employee (“E”) is a director of the company or of an associated company, the exception in subsection (1) or (2) only applies if, in the case of each company of which E is a director—
  - (a) E has no material interest in the company, and
  - (b) either—
    - (i) E’s employment is as a full-time working director, or
    - (ii) the company is non-profit-making or is established for charitable purposes only.

*Status: Point in time view as at 07/04/2005.*

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- (4) “Non-profit-making” means that the company does not carry on a trade and its functions do not consist wholly or mainly in the holding of investments or other property.
- (5) A company is “associated” with another if—
  - (a) one has control of the other, or
  - (b) both are under the control of the same person.

## **100 Accommodation provided as result of security threat**

This Chapter does not apply to living accommodation provided for an employee if—

- (a) there is a special threat to the security of the employee,
- (b) special security arrangements are in force, and
- (c) the employee resides in the accommodation as part of those arrangements.

### **[<sup>F19</sup>100A Homes outside UK owned through company etc**

- (1) This Chapter does not apply to living accommodation outside the United Kingdom provided by a company for a director or other officer of the company (“D”) or a member of D's family or household if—
  - (a) the company is wholly owned by D or D and other individuals (and no interest in the company is partnership property), and
  - (b) the company has been the holding company of the property at all times after the relevant time.
- (2) The company is “the holding company of the property” when—
  - (a) it owns a relevant interest in the property,
  - (b) its main or only asset is that interest, and
  - (c) the only activities undertaken by it are ones that are incidental to its ownership of that interest.
- (3) The company is also “the holding company of the property” when—
  - (a) a company (“the subsidiary”) which is wholly owned by the company meets the conditions in paragraphs (a) to (c) of subsection (2),
  - (b) the company's main or only asset is its interest in the subsidiary, and
  - (c) the only activities undertaken by the company are ones that are incidental to its ownership of that interest.
- (4) “Relevant interest in the property” means an interest under the law of any territory that confers (or would but for any inferior interest confer) a right to exclusive possession of the property at all times or at certain times.
- (5) “The relevant time” is the time the company first owned a relevant interest in the property; but this is subject to subsection (6).
- (6) If—
  - (a) none of D's interest in the company was acquired directly or indirectly from a person connected with D, and
  - (b) the company owned a relevant interest in the property at the time D first acquired an interest in the company,“the relevant time” is the time D first acquired such an interest.

*Status: Point in time view as at 07/04/2005.*

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### Textual Amendments

**F19** Ss. 100A,100B inserted (retrospectively) by [Finance Act 2008 \(c. 9\), s. 45](#)

## **100B Section 100A(1): exceptions**

- (1) Section 100A(1) does not apply if subsection (2), (3) or (4) applies.
- (2) This subsection applies if—
  - (a) the company's interest in the property was acquired directly or indirectly from a connected company at an undervalue, or
  - (b) the company's interest in the property derives from an interest that was so acquired.
- (3) This subsection applies if, at any time after the relevant time—
  - (a) expenditure in respect of the property has been incurred directly or indirectly by a connected company, or
  - (b) any borrowing of the company directly or indirectly from a connected company has been outstanding (but see subsection (7)).
- (4) This subsection applies if the living accommodation is provided in pursuance of an arrangement the main purpose, or one of the main purposes, of which is the avoidance of tax or national insurance contributions.
- (5) In subsection (2) references to the acquisition of an interest include the grant of an interest.
- (6) For the purposes of that subsection, an interest is acquired at an undervalue if the total consideration for it is less than that which might reasonably have been expected to be obtained on a disposal of the interest on the open market; and “consideration” here means consideration provided at any time (and, for example, includes payments by way of rent).
- (7) For the purposes of subsection (3)(b), no account is to be taken of—
  - (a) any borrowing at a commercial rate, or
  - (b) any borrowing which results in D being treated under Chapter 7 (taxable benefits: loans) as receiving earnings.
- (8) In subsection (4) “arrangement” includes any scheme, agreement or understanding, whether or not enforceable.
- (9) In this section “connected company” means—
  - (a) a company connected with D, with a member of D's family or with an employer of D, or
  - (b) a company connected with such a company.]

### Textual Amendments

**F19** Ss. 100A,100B inserted (retrospectively) by [Finance Act 2008 \(c. 9\), s. 45](#)



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## **101 Chevening House**

This Chapter does not apply to living accommodation provided for an employee if the accommodation is—

- (a) Chevening House, or
- (b) any other premises held on the trusts of the trust instrument set out in the Schedule to the Chevening Estate Act 1959 (c. 49),

and the employee is a person nominated in accordance with those trusts.

*Benefit of living accommodation treated as earnings*

## **102 Benefit of living accommodation treated as earnings**

- (1) If living accommodation to which this Chapter applies is provided in any period—
  - (a) which consists of the whole or part of a tax year, and
  - (b) throughout which the employee holds the employment,the cash equivalent of the benefit of the accommodation is to be treated as earnings from the employment for that year.
- (2) In this Chapter that period is referred to as “the taxable period”.
- (3) Section 103 indicates how the cash equivalent is calculated.

*Calculation of cash equivalent*

## **103 Method of calculating cash equivalent**

- (1) The cash equivalent is calculated—
  - (a) under section 105 if the cost of providing the living accommodation does not exceed £75,000; and
  - (b) under section 106 if the cost of providing the living accommodation exceeds £75,000.
- (2) Section 104 (general rule) sets out how to calculate the cost of providing living accommodation for the purpose of determining whether or not it exceeds £75,000.
- (3) In this Chapter—
  - “annual value”,
  - “person involved in providing accommodation”, and
  - “the property”,have the meaning given by sections 110 to 113, and “the taxable period” has the meaning given by section 102(2).

## **104 General rule for calculating cost of providing accommodation**

For any tax year the cost of providing living accommodation is given by the formula—

$$A + 1 - P$$

where—

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A is any expenditure incurred in acquiring the estate or interest in the property held by a person involved in providing the accommodation,

I is any expenditure incurred on improvements to the property which has been incurred before the tax year in question by a person involved in providing the accommodation, and

P is so much of any payment or payments made by the employee to a person involved in providing the accommodation as represents—

- (a) reimbursement of A or I, or
- (b) consideration for the grant to the employee of a tenancy or sub-tenancy of the property.

*Accommodation costing £75,000 or less*

### **105 Cash equivalent: cost of accommodation not over £75,000**

- (1) The cash equivalent is to be calculated under this section if the cost of providing the living accommodation does not exceed £75,000.
- (2) The cash equivalent is the difference between—
  - (a) the rental value of the accommodation for the taxable period, and
  - (b) any sum made good by the employee to the person at whose cost the accommodation is provided that is properly attributable to its provision.
- (3) The “rental value of the accommodation” for the taxable period is the rent which would have been payable for that period if the property had been let to the employee at an annual rent equal to the annual value.
- (4) But if the person at whose cost the accommodation is provided pays rent for the whole or part of the taxable period at an annual rate greater than the annual value—
  - (a) subsection (3) does not apply to that period or (as the case may be) that part of it; and
  - (b) instead the “rental value of the accommodation” for that period or part is the rent payable for it by that person.
- (5) If the rental value of the accommodation for the taxable period does not exceed any sum made good by the employee as mentioned in subsection (2)(b), the cash equivalent is nil.

*Accommodation costing more than £75,000*

### **106 Cash equivalent: cost of accommodation over £75,000**

- (1) The cash equivalent is calculated under this section if the cost of providing the living accommodation exceeds £75,000.
- (2) To calculate the cash equivalent—

*Step 1*

Calculate the amount that would be the cash equivalent if section 105 applied (cash equivalent: cost of accommodation not over £75,000).

*Status: Point in time view as at 07/04/2005.*

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### Step 2

Calculate the following amount (“the additional yearly rent”)—

$$\text{ORI} \times (C - \text{£}75,000)$$

where—

ORI is the official rate of interest in force for the purposes of Chapter 7 of this Part (taxable benefits: loans) on 6th April in the tax year, and

C is the cost of providing the accommodation calculated—

- (a) in accordance with section 104 (general rule for calculating cost of accommodation), or
- (b) in a case where section 107 applies (special rule for calculating cost of providing accommodation), in accordance with that section instead.

### Step 3

Calculate the rent which would have been payable for the taxable period if the property had been let to the employee at the additional yearly rent calculated under step 2.

### Step 4

Calculate the cash equivalent by—

- (a) adding together the amounts calculated under steps 1 and 3, and
  - (b) (if allowed by subsection (3)) subtracting from that total the excess rent paid by the employee.
- (3) In step 4—
- (a) paragraph (b) only applies if, in respect of the taxable period, the rent paid by the employee in respect of the accommodation to the person providing it exceeds the rental value of the accommodation for that period as set out in section 105(3) or (4)(b), as applicable, and
  - (b) “the excess rent” means the total amount of that excess.

## 107 Special rule for calculating cost of providing accommodation

- (1) This section contains a special rule for calculating the cost of providing living accommodation which—
  - (a) operates for the purposes of step 2 of section 106(2) (calculating the additional yearly rent), and
  - (b) accordingly only operates where the cost of provision for the purposes of section 106(1) (as calculated under section 104) exceeds £75,000.
- (2) This section applies if, throughout the period of 6 years ending with the date when the employee first occupied the accommodation (“the initial date”), an estate or interest in the property was held by a person involved in providing the accommodation.

It does not matter whether it was the same estate, interest or person throughout.

- (3) For any tax year the cost of providing the living accommodation for the purposes mentioned in subsection (1)(a) is given by the formula—

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## **MV + I - P**

where—

MV is the price which the property might reasonably be expected to have fetched on a sale in the open market with vacant possession as at the initial date,

I is any expenditure incurred on improvements to the property which has been incurred during the period—

- (a) beginning with the initial date, and
- (b) ending with the day before the beginning of the tax year,

by a person involved in providing the accommodation, and

P is so much of any payment or payments made by the employee to a person involved in providing the accommodation as represents—

- (a) reimbursement (up to an amount not exceeding MV) of any expenditure incurred in acquiring the estate or interest in the property held on the initial date,
- (b) reimbursement of I, or
- (c) consideration for the grant to the employee of a tenancy or sub-tenancy of the property.

- (4) In estimating MV no reduction is to be made for an option in respect of the property held by—
  - (a) the employee,
  - (b) a person connected with the employee, or
  - (c) a person involved in providing the accommodation.

### *Apportionment of cash equivalent*

#### **108 Cash equivalent: accommodation provided for more than one employee**

- (1) If, for the whole or part of a tax year, the same living accommodation is provided for more than one employee at the same time, the total of the cash equivalents for all of the employees is to be limited to the amount that would be the cash equivalent if the accommodation was provided for one employee.
- (2) The cash equivalent for each of the employees is to be such part of that amount as is just and reasonable.

### *Other tax implications*

#### **109 Priority of this Chapter over Chapter 1 of this Part**

- (1) This section applies if—
  - (a) under this Chapter the cash equivalent of the benefit of living accommodation is to be treated as earnings from an employee's employment for a tax year, and
  - (b) under Chapter 1 of this Part an amount would, apart from this section, constitute earnings from the employment for the year in respect of the provision of the accommodation.

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- (2) The full amount of the cash equivalent is to be treated as earnings from the employment for that year under this Chapter.
- (3) The amount mentioned in subsection (1)(b) is to constitute earnings from the employment for the year under Chapter 1 of this Part only to the extent that it exceeds the amount mentioned in subsection (2).

### *Supplementary*

#### **110 Meaning of “annual value”**

- (1) For the purposes of this Chapter the “annual value” of living accommodation is the rent which might reasonably be expected to be obtained on a letting from year to year if—
  - (a) the tenant undertook to pay all taxes, rates and charges usually paid by a tenant, and
  - (b) the landlord undertook to bear the costs of the repairs and insurance and the other expenses (if any) necessary for maintaining the property in a state to command that rent.
- (2) For the purposes of subsection (1) that rent—
  - (a) is to be taken to be the amount that might reasonably be expected to be so obtained in respect of the letting of the accommodation, and
  - (b) is to be calculated on the basis that the only amounts that may be deducted in respect of services provided by the landlord are amounts in respect of the cost to the landlord of providing any relevant services.
- (3) If living accommodation is of a kind that might reasonably be expected to be let on terms under which—
  - (a) the landlord is to provide any services which are either—
    - (i) relevant services, or
    - (ii) the repair, insurance or maintenance of any premises which do not form part of the accommodation but belong to or are occupied by the landlord, and
  - (b) amounts are payable in respect of the services in addition to the rent,the rent to be established under subsection (1) in respect of the accommodation is to be increased under subsection (4).
- (4) That rent is to include—
  - (a) where the services are relevant services, so much of the additional amounts as exceeds the cost to the landlord of providing the services;
  - (b) where the services are within subsection (3)(a)(ii), the whole of the additional amounts.
- (5) In this section “relevant service” means a service other than the repair, insurance or maintenance of the accommodation or of any other premises.

#### **111 Disputes as to annual value**

- (1) This section applies if there is a dispute as to the amount of the annual value of living accommodation for the purposes of this Chapter.

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- (2) The question is to be determined by the General Commissioners.
- (3) The Commissioners must hear and determine the question in the same way as an appeal.

## 112 Meaning of “person involved in providing the accommodation”

For the purposes of this Chapter “person involved in providing the accommodation” means any of the following—

- (a) the person providing the accommodation;
- (b) the employee’s employer (if not within paragraph (a));
- (c) any person, other than the employee, who is connected with a person within paragraph (a) or (b).

## 113 Meaning of “the property”

For the purposes of this Chapter “the property”, in relation to living accommodation, means the property consisting of that accommodation.

## CHAPTER 6

### TAXABLE BENEFITS: CARS, VANS AND RELATED BENEFITS

#### *General*

## 114 Cars, vans and related benefits

- (1) This Chapter applies to a car or a van in relation to a particular tax year if in that year the car or van—
  - (a) is made available (without any transfer of the property in it) to an employee or a member of the employee’s family or household,
  - (b) is so made available by reason of the employment (see section 117), and
  - (c) is available for the employee’s or member’s private use (see section 118).
- (2) Where this Chapter applies to a car or van—
  - (a) sections 120 to 148 provide for the cash equivalent of the benefit of the car to be treated as earnings,
  - (b) sections 149 to 153 provide for the cash equivalent of the benefit of any fuel provided for the car to be treated as earnings, <sup>F20</sup>...
  - (c) sections 154 to [<sup>F21</sup>159] provide for the cash equivalent of the benefit of the van to be treated as earnings<sup>[F22]</sup>; and
  - (d) sections 160 to 164 provide for the cash equivalent of the benefit of any fuel provided for the van to be treated as earnings in certain circumstances.]
- (3) This Chapter does not apply if an amount constitutes earnings from the employment in respect of the benefit of the car or van by virtue of any other provision (see section 119).

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[<sup>F23</sup>(3A) This Chapter does not apply to a van in relation to a tax year if the private use of the van during the tax year by the employee or member of the employee’s family or household is insignificant.]

- (4) The following provisions of this Chapter provide for further exceptions—
- section 167 (pooled cars);
  - section 168 (pooled vans);
  - section 169 (car available to more than one member of family or household employed by same employer).
- [<sup>F24</sup>section 169A (van available to more than one member of family or household employed by same employer).]

#### Textual Amendments

- F20** Word in s. 114(2)(b) repealed (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(9\)](#)
- F21** Word in s. 114(2)(c) substituted (with effect in accordance with s. 80(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 14 para. 2\(2\)](#)
- F22** S. 114(2)(d) and preceding word inserted (with effect in accordance with s. 80(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 14 para. 2\(2\)](#)
- F23** S. 114(3A) inserted (with effect in accordance with s. 80(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 14 para. 2\(3\)](#)
- F24** Words in s. 114(4) inserted (with effect in accordance with s. 80(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 14 para. 2\(4\)](#)

## 115 Meaning of “car” and “van”

- (1) In this Chapter—
- “car” means a mechanically propelled road vehicle which is not—
- (a) a goods vehicle,
  - (b) a motor cycle,
  - (c) an invalid carriage, or
  - (d) a vehicle of a type not commonly used as a private vehicle and unsuitable to be so used;
- “van” means a mechanically propelled road vehicle which—
- (a) is a goods vehicle, and
  - (b) has a design weight not exceeding 3,500 kilograms,
- and which is not a motor cycle.
- (2) For the purposes of subsection (1)—
- “design weight” means the weight which a vehicle is designed or adapted not to exceed when in normal use and travelling on a road laden;
- “goods vehicle” means a vehicle of a construction primarily suited for the conveyance of goods or burden of any description;
- “invalid carriage” has the meaning given by section 185(1) of the Road Traffic Act 1988 (c. 52);
- “motor cycle” has the meaning given by section 185(1) of the Road Traffic Act 1988.

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## 116 Meaning of when car or van is available to employee

- (1) For the purposes of this Chapter a car or van is available to an employee at a particular time if it is then made available, by reason of the employment and without any transfer of the property in it, to the employee or a member of the employee's family or household.
- (2) References in this Chapter to—
  - (a) the time when a car [<sup>F25</sup>or van] is first made available to an employee are to the earliest time when the car [<sup>F25</sup>or van] is made available as mentioned in subsection (1), and
  - (b) the last day in a year on which a car [<sup>F25</sup>or van] is available to an employee are to the last day in the year on which the car [<sup>F25</sup>or van] is made available as mentioned in subsection (1).
- (3) This section does not apply to section 138 (automatic car [<sup>F25</sup>or van] for a disabled employee).

### Textual Amendments

**F25** Words in s. 116(2) inserted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 14 para. 3](#)

## 117 Meaning of car or van made available by reason of employment

For the purposes of this Chapter a car or van made available by an employer to an employee or a member of the employee's family or household is to be regarded as made available by reason of the employment unless—

- (a) the employer is an individual, and
- (b) it is so made available in the normal course of the employer's domestic, family or personal relationships.

## 118 Availability for private use

- (1) For the purposes of this Chapter a car or van made available in a tax year to an employee or a member of the employee's family or household is to be treated as available for the employee's or member's private use unless in that year—
  - (a) the terms on which it is made available prohibit such use, and
  - (b) it is not so used.
- (2) In this Chapter "private use", in relation to a car or van made available to an employee or a member of the employee's family or household, means any use other than for the employee's business travel (see section 171(1)).

## 119 Where alternative to benefit of car [<sup>F26</sup>or van] offered

- (1) This section applies where in a tax year—
  - (a) a car [<sup>F26</sup>or van] is made available as mentioned in section 114(1), and
  - (b) an alternative to the benefit of the car [<sup>F26</sup>or van] is offered.
- (2) The mere fact that the alternative is offered does not result in an amount in respect of the benefit constituting earnings by virtue of Chapter 1 of this Part (earnings).



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### Textual Amendments

**F26** Words in s. 119 inserted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 14 para. 4](#)

## *Cars: benefit treated as earnings*

### **120 Benefit of car treated as earnings**

- (1) If this Chapter applies to a car in relation to a particular tax year, the cash equivalent of the benefit of the car is to be treated as earnings from the employment for that year.
- (2) In such a case the employee is referred to in this Chapter as being chargeable to tax in respect of the car in that year.

### **121 Method of calculating the cash equivalent of the benefit of a car**

- (1) The cash equivalent of the benefit of a car for a tax year is calculated as follows—

#### *Step 1*

Find the price of the car in accordance with sections 122 to 124.

#### *Step 2*

Add the price of any accessories which fall to be taken into account in accordance with sections 125 to 131.

#### *Step 3*

Make any deduction under section 132 for capital contributions made by the employee to the cost of the car or accessories.

#### *Step 4*

If the amount carried forward from step 3 exceeds £80,000, the interim sum is £80,000.

In any other case, the interim sum is the amount carried forward from step 3.

#### *Step 5*

Find the appropriate percentage for the car for the year in accordance with sections 133 to 142.

#### *Step 6*

Multiply the interim sum by the appropriate percentage for the car for the year.

#### *Step 7*

Make any deduction under section 143 for any periods when the car was unavailable.

The resulting amount is the provisional sum.

#### *Step 8*

Make any deduction from the provisional sum under section 144 in respect of payments by the employee for the private use of the car.

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The result is the cash equivalent of the benefit of the car for the year.

- (2) The method of calculation set out in subsection (1) is modified in the special cases dealt with in—
  - section 146 (cars that run on road fuel gas), and
  - section 147 (classic cars: 15 years of age or more).
- (3) The cash equivalent may be reduced under section 148 where the car is shared.

### *Cars: the price of a car*

## **122 The price of the car**

For the purposes of this Chapter the price of a car means—

- (a) its list price, if it has one, or
- (b) its notional price, if it has no list price.

## **123 The list price of a car**

- (1) In this Chapter a car’s “list price” means the price published by the car’s manufacturer, importer or distributor (as the case may be) as the inclusive price appropriate for a car of that kind if sold—
  - (a) in the United Kingdom,
  - (b) singly,
  - (c) in a retail sale,
  - (d) in the open market, and
  - (e) on the day immediately before the date of the car’s first registration.
- (2) The “inclusive price” means the price inclusive of—
  - (a) any charge for delivery by the manufacturer, importer or distributor to the seller’s place of business, and
  - (b) any relevant taxes (see section 171(1)).

## **124 The notional price of a car with no list price**

- (1) In this Chapter a car’s “notional price” means the price which might reasonably have been expected to be its list price if its manufacturer, importer or distributor (as the case may be) had published a price as the inclusive price appropriate for a sale of a car of the same kind sold—
  - (a) in the United Kingdom,
  - (b) singly,
  - (c) in a retail sale,
  - (d) in the open market,
  - (e) on the day immediately before the date of the car’s first registration, and
  - (f) with accessories equivalent to the qualifying accessories (see section 125) available with the car at the time when it was first made available to the employee.
- (2) In this section “inclusive price” has the same meaning as in section 123.

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### *Cars: treatment of accessories*

#### **125 Meaning of “accessory” and related terms**

- (1) In this Chapter “qualifying accessory” means an accessory which—
  - (a) is made available for use with the car without any transfer of the property in the accessory,
  - (b) is made available by reason of the employment, and
  - (c) is attached to the car (whether permanently or not).
- (2) For the purposes of this Chapter “accessory” includes any kind of equipment but does not include—
  - (a) equipment necessarily provided for use in the performance of the duties of the employment;
  - (b) equipment by means of which a car is capable of running on road fuel gas;
  - (c) equipment to enable a disabled person to use a car (see section 172);
  - (d) a mobile telephone (within the meaning given in section 319(2)).
- (3) But subsection (2)(b) does not apply in relation to a car to which section 137 (different CO<sub>2</sub> emissions figure for bi-fuel cars) applies.
- (4) In this Chapter—
  - “standard accessory” means an accessory equivalent to an accessory assumed to be available with cars of the same kind as the car in question in arriving at the list price, and
  - “non-standard accessory” means any other accessory.

#### **126 Amounts taken into account in respect of accessories**

- (1) The price of the following accessories is to be taken into account under step 2 of section 121(1)—
  - (a) in the case of a car with a list price, the price of any initial extra accessory, and
  - (b) in the case of any car, the price of any later accessory.
- (2) In this Chapter an “initial extra accessory” means a qualifying accessory which—
  - (a) is a non-standard accessory,
  - (b) is available with the car at the time when it is first made available to the employee, and
  - (c) if it is an accessory in relation to which there is no published price of the manufacturer, importer or distributor of the car (see section 128), is available with the car in the tax year in question.
- (3) In this Chapter a “later accessory” means a qualifying accessory which—
  - (a) is available with the car in the tax year in question,
  - (b) was not available with the car at the time when it was first made available to the employee,
  - (c) was not made available with the car before 1st August 1993, and
  - (d) has a price of at least £100.
- (4) In this section references to the price of an accessory are to—
  - (a) its list price, if it has one, or

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(b) its notional price, if it has no list price.

(5) This section is subject to section 131 (replacement accessories).

### **127 The list price of an accessory**

- (1) For the purposes of this Chapter the list price of an initial extra accessory is—
- (a) the published price of the manufacturer, importer or distributor of the car (see section 128), or
  - (b) if there is no such price, the published price of the manufacturer, importer or distributor of the accessory (see section 129).
- (2) For the purposes of this Chapter the list price of a later accessory is the published price of the manufacturer, importer or distributor of the accessory (see section 129).

### **128 Accessory: published price of the car manufacturer etc.**

- (1) In this Chapter the “published price of the manufacturer, importer or distributor of the car” in relation to an accessory means the price published by the car’s manufacturer, importer or distributor (as the case may be) as the inclusive price appropriate for an equivalent accessory if sold with a car of the same kind—
- (a) in the United Kingdom,
  - (b) singly,
  - (c) in a retail sale,
  - (d) in the open market, and
  - (e) on the day immediately before the date of the car’s first registration.
- (2) The “inclusive price” means the price inclusive of—
- (a) any charge for delivery by the manufacturer, importer or distributor to the seller’s place of business,
  - (b) any relevant taxes other than car tax (see section 171(1)), and
  - (c) any charge for fitting the accessory.

### **129 Accessory: published price of the accessory manufacturer etc.**

- (1) In this Chapter the “published price of the manufacturer, importer or distributor of the accessory” in relation to an accessory means the price published by or on behalf of the manufacturer, importer or distributor of the accessory (as the case may be) as the inclusive price appropriate for such an accessory if sold—
- (a) in the United Kingdom,
  - (b) singly,
  - (c) in a retail sale,
  - (d) in the open market, and
  - (e) at the time immediately before the accessory concerned is first made available for use with the car.
- (2) The “inclusive price” means the price inclusive of—
- (a) any charge for delivery by the manufacturer, importer or distributor to the seller’s place of business,
  - (b) any relevant taxes other than car tax (see section 171(1)), and

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- (c) in the case of an accessory permanently attached to the car, the price which the seller would charge for attaching it.
- (3) In the case of an initial extra accessory, the time referred to in subsection (1)(e) may be a time before the car is first made available to the employee.

### **130 The notional price of an accessory**

- (1) In this Chapter the “notional price” of an accessory means the inclusive price which it might reasonably have been expected to fetch if sold—
  - (a) in the United Kingdom,
  - (b) singly,
  - (c) in a retail sale,
  - (d) in the open market, and
  - (e) at the time immediately before the accessory concerned is first made available for use with the car.
- (2) The “inclusive price” means the price inclusive of—
  - (a) any charge for delivery by the manufacturer, importer or distributor to the seller’s place of business,
  - (b) any relevant taxes other than car tax (see section 171(1)), and
  - (c) in the case of an accessory permanently attached to the car, the price which the seller would charge for attaching it.
- (3) In the case of an initial extra accessory, the time referred to in subsection (1)(e) may be a time before the car is first made available to the employee.

### **131 Replacement accessories**

- (1) This section applies where—
  - (a) a later accessory is available with the car in the tax year in question,
  - (b) that accessory (“the new accessory”) replaced another qualifying accessory (“the old accessory”) in that year or an earlier tax year, and
  - (c) the new accessory is of the same kind as the old accessory.
- (2) If the new accessory is not superior to the old accessory, the cash equivalent of the benefit of the car for the tax year is to be calculated under step 2 of section 121(1) as if—
  - (a) the replacement has not been made, and
  - (b) the new accessory is a continuation of the old accessory.
- (3) If the new accessory is superior to the old accessory and the conditions in subsection (4) are met, the cash equivalent of the benefit of the car for the tax year is to be calculated under step 2 of section 121(1)—
  - (a) as if the old accessory was not available with the car in that tax year, or
  - (b) where the price of the old accessory would (apart from this section) be added to the price of the car under step 2 of section 121(1) as an initial extra accessory, as if it was not available with the car at the time when the car was first made available to the employee.
- (4) The conditions mentioned in subsection (3) are that—
  - (a) the old accessory was a non-standard accessory, and

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- (b) both the old and the new accessory would (apart from this section) be taken into account under step 2 of section 121(1) in calculating the cash equivalent of the benefit of the car for the year.
- (5) For the purposes of this section a new accessory is superior to an old accessory if the price of the new accessory exceeds whichever is the greater of—
- (a) the price of the old accessory, and
  - (b) the price of an accessory equivalent to the old accessory at the time immediately before the new accessory is first made available for use with the car.
- (6) In this section references to the price of an accessory are to—
- (a) its list price, if it has one, or
  - (b) its notional price, if it has no list price.

*Cars: capital contributions by employee*

**132 Capital contributions by employee**

- (1) This section applies if the employee contributes a capital sum to expenditure on the provision of—
- (a) the car, or
  - (b) any qualifying accessory which is taken into account in calculating the cash equivalent of the benefit of the car.
- (2) A deduction is to be made from the amount carried forward from step 2 of section 121(1)—
- (a) for the tax year in which the contribution is made, and
  - (b) for all subsequent years in which the employee is chargeable to tax in respect of the car by virtue of section 120.
- (3) The amount of the deduction allowed in any tax year is the lesser of—
- (a) the total of the capital sums contributed by the employee in that year and any earlier years to expenditure on the provision of—
    - (i) the car, or
    - (ii) any qualifying accessory which is taken into account in calculating the cash equivalent of the benefit of the car for the tax year in question, and
  - (b) £5,000.

*Cars: the appropriate percentage*

**133 How to determine the “appropriate percentage”**

- (1) The “appropriate percentage” for a car for a year depends upon when the car was first registered.
- (2) If the car was first registered on or after 1st January 1998, the “appropriate percentage” depends upon whether the car—
- (a) is a car with a CO<sub>2</sub> emissions figure (see section 134(1)),
  - (b) is a car without a CO<sub>2</sub> emissions figure (see section 134(2)), or

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- (c) is a diesel car to which section 141 applies,  
and is determined under sections 139 to 141.
- (3) If the car was first registered before 1st January 1998, the “appropriate percentage” is determined under section 142.

#### **134 Meaning of car with or without a CO<sub>2</sub> emissions figure**

- (1) In this Chapter a “car with a CO<sub>2</sub> emissions figure” means—
- (a) a car first registered on or after 1st January 1998 but before 1st October 1999 to which section 135 applies,
  - (b) a car first registered on or after 1st October 1999 to which section 136 applies, or
  - (c) a car first registered on or after 1st January 2000 which is a car to which section 137 (bi-fuel cars) applies.
- (2) In this Chapter a “car without a CO<sub>2</sub> emissions figure” means any other car first registered on or after 1st January 1998.

*Cars: appropriate percentage: first registered on or after 1st January 1998*

#### **135 Car with a CO<sub>2</sub> emissions figure: pre-October 1999 registration**

- (1) This section applies to a car first registered on or after 1st January 1998 but before 1st October 1999 if when it was so registered—
- (a) it conformed to a vehicle type with an EC type-approval certificate (see section 171(1)), or
  - (b) it had a UK approval certificate (see section 171(1)),  
which specifies a CO<sub>2</sub> emissions figure in terms of grams per kilometre driven.
- (2) The car’s CO<sub>2</sub> emissions figure is that specified figure.
- (3) This is subject to section 138 (automatic car for a disabled employee).

#### **136 Car with a CO<sub>2</sub> emissions figure: post-September 1999 registration**

- (1) This section applies to a car first registered on or after 1st October 1999 if it is so registered on the basis of—
- (a) an EC certificate of conformity (see section 171(1)), or
  - (b) a UK approval certificate (see section 171(1)),  
which specifies a CO<sub>2</sub> emissions figure in terms of grams per kilometre driven.
- (2) The car’s CO<sub>2</sub> emissions figure is that specified figure unless more than one figure is specified, in which case the car’s CO<sub>2</sub> emissions figure is the figure specified as the CO<sub>2</sub> emissions (combined) figure.
- (3) This is subject to—
- (a) section 137 (bi-fuel cars), and
  - (b) section 138 (automatic car for a disabled employee).

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### **137 Car with a CO<sub>2</sub> emissions figure: bi-fuel cars**

- (1) This section applies to a car first registered on or after 1st January 2000 if it is so registered on the basis of—
  - (a) an EC certificate of conformity (see section 171(1)), or
  - (b) a UK approval certificate (see section 171(1)),
 which specifies separate CO<sub>2</sub> emissions figures in terms of grams per kilometre driven for different fuels.
- (2) The car's CO<sub>2</sub> emissions figure is—
  - (a) the lowest figure specified, or
  - (b) if there is more than one figure specified in relation to each fuel, the lowest CO<sub>2</sub> emissions (combined) figure specified.
- (3) This is subject to section 138 (automatic car for a disabled employee).

### **138 Car with a CO<sub>2</sub> emissions figure: automatic car for a disabled employee**

- (1) This section applies where—
  - (a) a car with a CO<sub>2</sub> emissions figure has automatic transmission (“the automatic car”),
  - (b) at any time in the year when the automatic car is available to the employee (“E”), E holds a disabled person's badge, and
  - (c) by reason of E's disability, E must, in the event of wanting to drive a car, drive a car which has automatic transmission.
- (2) If, under sections 135 to 137, the automatic car's CO<sub>2</sub> emissions figure is more than it would have been if the automatic car had been an equivalent manual car, the CO<sub>2</sub> emissions figure for the automatic car is to be the CO<sub>2</sub> emissions figure for an equivalent manual car.
- (3) In subsection (2) “an equivalent manual car” means a car which—
  - (a) is first registered at or about the same time as the automatic car, and
  - (b) does not have automatic transmission, but otherwise is the closest variant available of the make and model of the automatic car.
- (4) For the purposes of this section a car has automatic transmission if—
  - (a) the driver of the car is not provided with any means by which the driver may vary the gear ratio between the engine and the road wheels independently of the accelerator and the brakes, or
  - (b) the driver is provided with such means, but they do not include—
    - (i) a clutch pedal, or
    - (ii) a lever which the driver may operate manually.
- (5) For the purposes of this section a car is available to an employee at a particular time if it is then made available, by reason of the employment and without any transfer of the property in it, to the employee.

### **139 Car with a CO<sub>2</sub> emissions figure: the appropriate percentage**

- (1) The appropriate percentage for a year for a car with a CO<sub>2</sub> emissions figure depends upon whether the car's CO<sub>2</sub> emissions figure exceeds the lower threshold for that year.



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- (2) If the car’s CO<sub>2</sub> emissions figure does not exceed the lower threshold for the year, the appropriate percentage for the year is 15% (“the basic percentage”).
- (3) If the car’s CO<sub>2</sub> emissions figure does exceed the lower threshold for the year, the appropriate percentage for the year is whichever is the lesser of—
  - (a) the basic percentage increased by one percentage point for each 5 grams per kilometre by which the CO<sub>2</sub> emissions figure exceeds the lower threshold for the year, and
  - (b) 35%.
- (4) The lower threshold is—

TABLE

| <i>Tax year</i>                                   | <i>Lower threshold (in g/km)</i> |
|---|----------------------------------|
| 2003-04   | 155                              |
| 2004-05<br>F27                                    | 145                              |
| ...   |                                  |
| [ <sup>F28</sup> 2005-06 and subsequent tax years | 140]                             |

- (5) If the car’s CO<sub>2</sub> emissions figure is not a multiple of 5, it is to be rounded down to the nearest multiple of 5 for the purposes of this section.
- (6) This section is subject to—
  - (a) section 141 (diesel cars), and
  - (b) any regulations made by the Treasury under section 170(4) (power to reduce the appropriate percentage).

**Textual Amendments**

- F27** Words in s. 139(4) repealed (10.7.2003) by [Finance Act 2003 \(c. 14\), s. 138\(2\), Sch. 43 Pt. 3\(2\)](#)  
**F28** Words in s. 139(4) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\), s. 138\(3\)](#)

**140 Car without a CO<sub>2</sub> emissions figure: the appropriate percentage**

- (1) The appropriate percentage for a year for a car without a CO<sub>2</sub> emissions figure is determined under this section.
- (2) If the car has an internal combustion engine with one or more reciprocating pistons, the appropriate percentage for the year is—

TABLE

| <i>Cylinder capacity of car in cubic centimetres</i> | <i>Appropriate percentage</i> |
|--|-------------------------------|
| 1,400 or less  | 15%                           |
| More than 1,400 but not more than 2,000              | 25%                           |

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|                 |     |
|-----------------|-----|
| More than 2,000 | 35% |
|-----------------|-----|

For this purpose a car's cylinder capacity is the capacity of its engine as calculated for the purposes of VERA 1994.

- (3) If subsection (2) does not apply, the appropriate percentage for the year is—
- (a) 15%, if the car is an electrically propelled vehicle, and
  - (b) 35%, in any other case.
- (4) For the purposes of this section a vehicle is not an electrically propelled vehicle unless—
- (a) it is propelled solely by electrical power, and
  - (b) that power is derived from—
    - (i) a source external to the vehicle, or
    - (ii) an electrical storage battery which is not connected to any source of power when the vehicle is in motion.
- (5) This section is subject to—
- (a) section 141 (diesel cars), and
  - (b) any regulations made by the Treasury under section 170(4) (power to reduce the appropriate percentage).

#### **141 Diesel cars: the appropriate percentage**

- (1) This section applies to a diesel car first registered on or after 1st January 1998.
- (2) To determine the appropriate percentage for such a car for a year—

*Step 1*

Determine whether the car is a car with a CO<sub>2</sub> emissions figure or a car without a CO<sub>2</sub> emissions figure (see section 134).

*Step 2*

Take what would be the appropriate percentage for the car for the year under section 139 or 140 as appropriate.

*Step 3*

The appropriate percentage for the car for the year is whichever is the smaller of—

- (a) the figure resulting from the addition of 3 percentage points to the figure found under step 2, and
  - (b) 35%.
- (3) In this section “diesel car” means a car which is propelled solely by diesel.
- (4) This section is subject to any regulations made by the Treasury under section 170(4) (power to reduce the appropriate percentage).

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*Cars: appropriate percentage: first registered before 1st January 1998*

#### **142 Car first registered before 1st January 1998: the appropriate percentage**

- (1) The appropriate percentage for a car first registered before 1st January 1998 is determined under this section.
- (2) If the car has an internal combustion engine with one or more reciprocating pistons, the appropriate percentage for the year is—

TABLE

| <i>Cylinder capacity of car in cubic centimetres</i> | <i>Appropriate percentage</i> |
|--|-------------------------------|
| 1,400 or less  | 15%                           |
| More than 1,400 but not more than 2,000              | 22%                           |
| More than 2,000                                      | 32%                           |

For this purpose a car's cylinder capacity is the capacity of its engine as calculated for the purposes of VERA 1994.

- (3) If subsection (2) does not apply, the appropriate percentage for the year is—
  - (a) 15%, if the car is an electrically propelled vehicle, and
  - (b) 32%, in any other case.
- (4) For the purposes of this section a vehicle is not an electrically propelled vehicle unless—
  - (a) it is propelled solely by electrical power, and
  - (b) that power is derived from—
    - (i) a source external to the vehicle, or
    - (ii) an electrical storage battery which is not connected to any source of power when the vehicle is in motion.

*Cars: unavailability or payments for private use*

#### **143 Deduction for periods when car unavailable**

- (1) A deduction is to be made from the amount carried forward from step 6 of section 121(1) if the car has been unavailable on any day during the tax year in question.
- (2) For the purposes of this section a car is unavailable on any day if the day—
  - (a) falls before the first day on which the car is available to the employee,
  - (b) falls after the last day on which the car is available to the employee, or
  - (c) falls within a period of 30 days or more throughout which the car is not available to the employee.
- (3) The amount of the deduction is given by the formula—

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$$\frac{U}{Y} \times A$$

where—

U is the number of days in the year on which the car is unavailable,

Y is the number of days in that year, and

A is the amount carried forward from step 6.

(4) This section is subject to section 145 (modification where car temporarily replaced).

#### **144 Deduction for payments for private use**

(1) A deduction is to be made from the provisional sum calculated under step 7 of section 121(1) if, as a condition of the car being available for the employee's private use, the employee—

- (a) is required in the tax year in question to pay (whether by way of deduction from earnings or otherwise) an amount of money for that use, and
- (b) makes such payment.

(2) If the amount paid by the employee in respect of that year is equal to or exceeds the provisional sum, the provisional sum is reduced so that the cash equivalent of the benefit of the car for that year is nil.

(3) In any other case the amount paid by the employee in respect of the year is deducted from the provisional sum in order to give the cash equivalent of the benefit of the car for that year.

(4) In this section the reference to the car being available for the employee's private use includes a reference to the car being available for the private use of a member of the employee's family or household.

(5) This section is subject to section 145 (modification where car temporarily replaced).

#### **145 Modification of provisions where car temporarily replaced**

(1) This section applies if—

- (a) the car normally available to an employee ("the normal car") is not available to the employee for a period of less than 30 days,
- (b) another car ("the replacement car") is made available to the employee in order to replace the normal car for the whole or part of that period,
- (c) the employee is chargeable to tax in respect of both the normal car and the replacement car by virtue of section 120, and
- (d) the replacement car meets condition A or B.

(2) Condition A is met if the replacement car is not materially better than the normal car.

(3) Condition B is met if the replacement car is not made available to the employee under an arrangement of which the main purpose, or one of the main purposes, is to provide the employee with the benefit of a car which is materially better than the normal car.

(4) If this section applies—

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- (a) section 143 (deduction for periods when car unavailable) applies so that the replacement car is to be treated as unavailable on the days of the period during which it replaces the normal car, and
  - (b) section 144 (deduction for payments for private use) applies as if the replacement had not been made and the replacement car were a continuation of the normal car.
- (5) A replacement car is regarded as materially better than the normal car if—
- (a) it is materially better in quality, or
  - (b) when calculating the cash equivalent of the benefit of the replacement car, the interim sum calculated under step 4 of section 121(1) is materially higher than the interim sum calculated in relation to the normal car.

#### *Cars: special cases*

### **146 Cars that run on road fuel gas**

- (1) This section applies if the car—
- (a) has been manufactured so as to be capable of running on road fuel gas, and
  - (b) is not a car to which section 137 (different CO<sub>2</sub> emissions figure for bi-fuel cars) applies.
- (2) The price of the car found under step 1 of section 121(1) is to be reduced by so much of that price as it is reasonable to attribute to the car being manufactured in such a way as to be capable of running on road fuel gas rather than in such a way as to be capable of running only on petrol.

### **147 Classic cars: 15 years of age or more**

- (1) This section applies in calculating the cash equivalent of the benefit of a car for a tax year if—
- (a) the age of the car at the end of the year is 15 years or more,
  - (b) the market value of the car for the year is £15,000 or more, and
  - (c) that market value exceeds the amount carried forward from step 3 of section 121(1).
- (2) For the amount carried forward from step 3 substitute the market value of the car for the tax year in question less any deductions under subsection (6).
- (3) The market value of a car for a tax year is the price which the car might reasonably have been expected to fetch on a sale in the open market on—
- (a) the last day of that year, or
  - (b) the last day in that year on which the car is available to the employee if that is earlier.
- (4) It is assumed that any qualifying accessories available with the car on that day are included in the sale.
- (5) Subsection (6) applies if the employee contributes a capital sum to expenditure on the provision of—
- (a) the car, or

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- (b) any qualifying accessory which is taken into account in determining the market value of the car.
- (6) A deduction is to be made from the market value of the car—
  - (a) for the tax year in which the contribution is made, and
  - (b) for all subsequent years in which the employee is chargeable to tax in respect of the car by virtue of section 120.
- (7) The amount of the deduction allowed in any tax year is the lesser of—
  - (a) the total of the capital sums contributed by the employee in that year and any earlier years to expenditure on the provision of—
    - (i) the car, or
    - (ii) any qualifying accessory which is taken into account in determining the market value of the car for the tax year in question, and
  - (b) £5,000.

*Cars: reduction where shared car*

#### **148 Reduction of cash equivalent where car is shared**

- (1) This section applies if in a tax year a car—
  - (a) is available to more than one employee concurrently,
  - (b) is so made available by the same employer, and
  - (c) is available concurrently for each employee's private use,
 and two or more of those employees are chargeable to tax in respect of the car in that year by virtue of section 120.
- (2) The cash equivalent of the benefit of the car to each of those employees for that year—
  - (a) is to be calculated separately under section 121, and
  - (b) is then to be reduced on a just and reasonable basis.
- (3) If the employment of any of the employees mentioned in subsection (1)(a) is an excluded employment, the availability of the car to that employee is to be disregarded for the purposes of subsection (2)(b).
- (4) In this section the reference to the car being available for each employee's private use includes a reference to the car being available for the private use of a member of the employee's family or household.

*Car fuel: benefit treated as earnings*

#### **149 Benefit of car fuel treated as earnings**

- (1) If in a tax year—
  - (a) fuel is provided for a car by reason of an employee's employment, and
  - (b) that person is chargeable to tax in respect of the car by virtue of section 120,
 the cash equivalent of the benefit of the fuel is to be treated as earnings from the employment for that year.
- (2) The cash equivalent of the benefit of the fuel is calculated in accordance with sections 150 to 153.

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- (3) Fuel is to be treated as provided for a car, in addition to any other way in which it may be provided, if—
  - (a) any liability in respect of the provision of fuel for the car is discharged,
  - (b) a non-cash voucher or a credit-token is used to obtain fuel for the car,
  - (c) a non-cash voucher or a credit-token is used to obtain money which is spent on fuel for the car, or
  - (d) any sum is paid in respect of expenses incurred in providing fuel for the car.
- (4) References in this section to fuel do not include any facility or means for supplying electrical energy for an electrically propelled vehicle.

### **150 Car fuel: calculating the cash equivalent**

- (1) The cash equivalent of the benefit of the fuel is the appropriate percentage of £14,400.
- (2) The “appropriate percentage” means the appropriate percentage determined in accordance with sections 133 to 142 for the purpose of calculating the cash equivalent of the benefit of the car for which the fuel is provided.
- (3) But the cash equivalent may be—
  - (a) nil where either of the conditions in section 151 is met;
  - (b) proportionately reduced under section 152;
  - (c) reduced under section 153.

### **151 Car fuel: nil cash equivalent**

- (1) The cash equivalent of the benefit of the fuel is nil if condition A or B is met.
- (2) Condition A is met if in the tax year in question—
  - (a) the employee is required to make good to the person providing the fuel the whole of the expense incurred by that person in connection with the provision of the fuel for the employee’s private use, and
  - (b) the employee does make good that expense.
- (3) Condition B is met if in the tax year in question the fuel is made available only for business travel (see section 171(1)).

### **152 Car fuel: proportionate reduction of cash equivalent**

- (1) The cash equivalent of the benefit of the fuel is to be proportionately reduced if for any part of the tax year in question the car for which the fuel is provided is unavailable (within the meaning of section 143 (deduction for periods when car unavailable)).
- (2) The cash equivalent of the benefit of the fuel is also to be proportionately reduced if for any part of the tax year in question—
  - (a) the facility for the provision of fuel as mentioned in section 149(1) is not available,
  - (b) the fuel is made available only for business travel (see section 171(1)), or
  - (c) the employee is required to make good to the person providing the fuel the whole of the expense incurred by that person in connection with the provision of the fuel for the employee’s private use and the employee does make good that expense.

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- (3) The fact that any of the conditions specified in subsection (2) is met for part of a tax year is to be disregarded if there is a time later in that year when none of those conditions is met.
- (4) Where the cash equivalent is to be proportionately reduced under subsection (1) or (2) (or under both those subsections), the reduced amount is given by the formula—

$$CE \times \frac{Y-D}{Y}$$

where—

CE is the amount of the cash equivalent before any reduction,

Y is the number of days in the tax year in question, and

D is the total number of days in that year on which either the car is unavailable or one or more of the conditions in subsection (2) is met.

### 153 Car fuel: reduction of cash equivalent

If a reduction of the cash equivalent of the benefit of the car for which the fuel is provided is made under section 148 (reduction of cash equivalent where car is shared), a corresponding reduction is to be made in relation to the cash equivalent of the benefit of the fuel.

*Vans: benefit treated as earnings*

### 154 Benefit of van treated as earnings

If this Chapter applies to a van in relation to a particular tax year, the cash equivalent of the benefit of the van is to be treated as earnings from the employment for that year.

### [<sup>F29</sup>155 Cash equivalent of the benefit of a van

- (1) What is the cash equivalent of the benefit of a van for a tax year depends on whether or not the restricted private use condition is met in relation to the van for the year.
- (2) The cash equivalent of the benefit of the van for the year is—
- (a) nil if that condition is met in relation to the van for the tax year, and
  - (b) the amount given by subsection (3) if it is not.
- (3) That amount is—
- (a) where the tax year is the tax year 2005-06 or 2006-07—
    - (i) £500 if the age of the van is less than 4 years at the end of the tax year, and
    - (ii) £350 in any other case, and
  - (b) where the tax year is a later tax year, £3,000.
- (4) The restricted private use condition is met in relation to a van for a tax year if—
- (a) the commuter use requirement is satisfied throughout the year (or the part of the year on which it is available to the employee) or the extent to which it is not satisfied during that period is insignificant, and



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- (b) the business travel requirement is satisfied throughout the year (or the part of the year on which it is available to the employee).
- (5) The commuter use requirement is satisfied at any time if—
  - (a) the terms on which the van is available to the employee at the time prohibit its private use otherwise than for the purposes of ordinary commuting or travel between two places that is for practical purposes substantially ordinary commuting, and
  - (b) neither the employee nor a member of the employee’s family or household makes private use of the van at the time otherwise than for those purposes.
- (6) In subsection (5) “ordinary commuting” has the same meaning as in section 338 (travel for necessary attendance) (see subsection (3) of that section).
- (7) The business travel requirement is satisfied at a time if the van is available to the employee at the time mainly for use for the purposes of the employee’s business travel (see section 171(1)).
- (8) The cash equivalent of the van may be reduced—
  - (a) under section 156 for any periods when the van is unavailable,
  - (b) under section 157 where the van is shared, and
  - (c) under section 158 in respect of payments by the employee for the private use of the van.]

#### Textual Amendments

**F29** Ss. 155-164 substituted for ss. 155-166 (with effect in accordance with s. 80(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 14 para. 5](#)

*<sup>F29</sup>Vans: reductions of cash equivalent*

#### 156 Meaning of “shared van”

- (1) The cash equivalent of the benefit of a van for a tax year under section 155(2)(a) or (b) is to be reduced if the van has been unavailable on any day during the year.
- (2) For the purposes of this section a van is unavailable on any day if the day—
  - (a) falls before the first day on which the van is available to the employee,
  - (b) falls after the last day on which the van is available to the employee, or
  - (c) falls within a period of 30 days or more throughout which the van is not available to the employee.
- (3) The amount of the reduction is given by the formula—

$$\frac{U}{Y} \times CE$$

where—

U is the number of days in the year on which the van is unavailable,

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Y is the number of days in the year, and

CE is the amount of the cash equivalent before any reduction.]

*[<sup>F29</sup>Reduction of cash equivalent where van is shared*

### **157 Reduction of cash equivalent where van is shared**

- (1) This section applies if in a tax year a van—
  - (a) is available to more than one employee concurrently,
  - (b) is so made available by the same employer, and
  - (c) is available concurrently for each employee’s private use.
- (2) The cash equivalent of the benefit of the van to each of those employees for that year—
  - (a) is to be calculated separately under sections 155 and 156, and
  - (b) is then to be reduced on a just and reasonable basis.
- (3) If —
  - (a) any of the employees mentioned in subsection (1)(a) (“E”) is a member of the family or household of another of them (“M”), and
  - (b) E’s employment is an excluded employment,
 the availability of the van to E is to be disregarded when applying subsection (2)(b) in respect of M.
- (4) In this section the reference to the van being available for each employee’s private use includes a reference to the van being available for the private use of a member of the employee’s family or household.]

*[<sup>F29</sup>Reduction for payments for private use*

### **158 Reduction for payments for private use**

- (1) The cash equivalent of the benefit of a van for a tax year under section 155(2)(a) or (b) (after any reduction under sections 156 and 157) is to be reduced if, as a condition of the van being available for the employee’s private use, the employee—
  - (a) is required in that year to pay (whether by way of deduction from earnings or otherwise) an amount of money for that use, and
  - (b) makes such payment.
- (2) If the amount paid by the employee in respect of that year is equal to or exceeds that cash equivalent, it is reduced to nil.
- (3) In any other case that cash equivalent is reduced by the amount paid by the employee.
- (4) In this section the reference to the van being available for the employee’s private use includes a reference to the van being available for the private use of a member of the employee’s family or household.]

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*[<sup>F29</sup>Modification of provisions where van temporarily replaced*

**159 Modification of provisions where van temporarily replaced**

- (1) This section applies if—
  - (a) the van normally available to an employee (“the normal van”) is not available to the employee for a period of less than 30 days,
  - (b) another van (“the replacement van”) is made available to the employee in order to replace the normal van for the whole or part of that period, and
  - (c) the employee is chargeable to tax in respect of both the normal van and the replacement van by virtue of section 154.
- (2) If this section applies—
  - (a) section 156 applies so that the replacement van is to be treated as unavailable on the days during the period on which it replaces the normal van, and
  - (b) sections 155, 157 and 158 apply as if the replacement van were the normal van.]

*[<sup>F29</sup>Van fuel: benefit treated as earnings*

**160 Benefit of van fuel treated as earnings**

- (1) If in a tax year—
  - (a) fuel is provided for a van by reason of an employee’s employment,
  - (b) that person is chargeable to tax in respect of the van by virtue of section 154, and
  - (c) the cash equivalent of the van for that year is that under section 155(2)(b), the cash equivalent of the benefit of the fuel is to be treated as earnings from the employment for that year.
- (2) The cash equivalent of the benefit of the fuel is calculated in accordance with sections 161 to 164.
- (3) Fuel is to be treated as provided for a van, in addition to any other way in which it may be provided, if—
  - (a) any liability in respect of the provision of fuel for the van is discharged,
  - (b) a non-cash voucher or a credit-token is used to obtain fuel for the van,
  - (c) a non-cash voucher or a credit-token is used to obtain money which is spent on fuel for the van, or
  - (d) any sum is paid in respect of expenses incurred in providing fuel for the van.
- (4) References in this section to fuel do not include any facility or means for supplying electrical energy for an electrically propelled vehicle.]

**[<sup>F29</sup>161 Van fuel: the cash equivalent**

The cash equivalent of the benefit of the fuel is—

- (a) where the tax year is the tax year 2005-06 or 2006-07, nil, and
- (b) where the tax year is a later tax year, £500.]

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### **[F<sup>29</sup>162 Van fuel: nil cash equivalent**

- (1) The cash equivalent of the benefit of the fuel is nil if condition A or B is met.
- (2) Condition A is met if in the tax year in question—
  - (a) the employee is required to make good to the person providing the fuel the whole of the expense incurred by that person in connection with the provision of the fuel for the employee’s private use, and
  - (b) the employee does make good that expense.
- (3) Condition B is met if in the tax year in question the fuel is made available only for business travel (see section 171(1)).]

### **[F<sup>29</sup>163 Van fuel: proportionate reduction of cash equivalent**

- (1) The cash equivalent of the benefit of the fuel is to be proportionately reduced if for any part of the tax year in question the van for which the fuel is provided is unavailable (within the meaning of section 156 (reduction for periods when van unavailable)).
- (2) But if section 159 (van temporarily replaced) applies—
  - (a) section 160 applies as if the replacement van were the normal van, and
  - (b) for the purposes of subsection (1) the replacement van is to be treated as unavailable on the days during the period on which it replaces the normal van.
- (3) The cash equivalent of the benefit of the fuel is also to be proportionately reduced if for any part of the tax year in question—
  - (a) the facility for the provision of fuel as mentioned in section 160 (1) is not available,
  - (b) the fuel is made available only for business travel (see section 171(1)), or
  - (c) the employee is required to make good to the person providing the fuel the whole of the expense incurred by that person in connection with the provision of the fuel for the employee’s private use and the employee does make good that expense.
- (4) The fact that any of the conditions specified in subsection (3) is met for part of a tax year is to be disregarded if there is a time later in that year when none of those conditions is met.
- (5) Where the cash equivalent is to be proportionately reduced under subsection (1) or (3) (or under both those subsections), the reduced amount is given by the formula—

$$CE \times \frac{Y - D}{Y}$$

where—

CE is the amount of the cash equivalent before any reduction,

Y is the number of days in the tax year in question, and

D is the total number of days in the tax year on which either the van is unavailable or one or more of the conditions in subsection (3) is met.]

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## [<sup>F29</sup>164 Van fuel: reduction of cash equivalent

If a reduction of the cash equivalent of the benefit of the van for which the fuel is provided is made under section 157 (reduction of cash equivalent where van is shared), a corresponding reduction is to be made in relation to the cash equivalent of the benefit of the fuel.]

### *Cars and vans: exceptions*

## 167 Pooled cars

- (1) This section applies to a car in relation to a particular tax year if for that year the car has been included in a car pool for the use of the employees of one or more employers.
- (2) For that tax year the car—
  - (a) is to be treated under section 114(1) (cars to which this Chapter applies) as not having been available for the private use of any of the employees concerned, and
  - (b) is not to be treated in relation to the employees concerned as an employment-related benefit within the meaning of Chapter 10 of this Part (taxable benefits: residual liability to charge) (see section 201).
- (3) In relation to a particular tax year, a car is included in a car pool for the use of the employees of one or more employers if in that year—
  - (a) the car was made available to, and actually used by, more than one of those employees,
  - (b) the car was made available, in the case of each of those employees, by reason of the employee's employment,
  - (c) the car was not ordinarily used by one of those employees to the exclusion of the others,
  - (d) in the case of each of those employees, any private use of the car made by the employee was merely incidental to the employee's other use of the car in that year, and
  - (e) the car was not normally kept overnight on or in the vicinity of any residential premises where any of the employees was residing, except while being kept overnight on premises occupied by the person making the car available to them.

## 168 Pooled vans

- (1) This section applies to a van in relation to a particular tax year if for that year the van has been included in a van pool for the use of the employees of one or more employers.
- (2) For that tax year the van—
  - (a) is to be treated under section 114(1) (vans to which this Chapter applies) as not having been available for the private use of any of the employees concerned, and
  - (b) is not to be treated in relation to the employees concerned as an employment-related benefit within the meaning of Chapter 10 of this Part (taxable benefits: residual liability to charge) (see section 201).

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- (3) In relation to a particular tax year, a van is included in a van pool for the use of the employees of one or more employers if in that year—
- (a) the van was made available to, and actually used by, more than one of those employees,
  - (b) the van was made available, in the case of each of those employees, by reason of the employee's employment,
  - (c) the van was not ordinarily used by one of those employees to the exclusion of the others,
  - (d) in the case of each of those employees, any private use of the van made by the employee was merely incidental to the employee's other use of the van in that year, and
  - (e) the van was not normally kept overnight on or in the vicinity of any residential premises where any of the employees was residing, except while being kept overnight on premises occupied by the person making the van available to them.

**169 Car available to more than one member of family or household employed by same employer**

- (1) This section applies where—
- (a) an employee ("E") and a member of the employee's family or household ("M") are employed by the same employer, and
  - (b) as a result of a car being made available to M in a tax year, E would (apart from this section) be chargeable to tax in respect of the car in that year by virtue of section 120.
- (2) The cash equivalent of the benefit of the car and of any fuel provided for the car by reason of E's employment is not to be treated as E's earnings for that year if—
- (a) M is chargeable to tax in respect of the car in that year by virtue of section 120, or
  - (b) where M's employment is an excluded employment, M had the benefit of the car in M's own right as an employee and condition A or B is met.
- (3) Condition A is met if equivalent cars are made available on the same terms to employees who—
- (a) are in similar employment to M with the same employer, and
  - (b) are not members of the family or household of employees of that employer who are employed in employment which is not an excluded employment.
- (4) Condition B is met if the making available of an equivalent car is in accordance with the normal commercial practice for an employment of the kind held by M.

**[<sup>F30</sup>169A Van available to more than one member of family or household employed by same employer**

- (1) This section applies where—
- (a) an employee ("E") and a member of the employee's family or household ("M") are employed by the same employer, and
  - (b) as a result of a van being made available to M in a tax year, E would (apart from this section) be chargeable to tax in respect of the van in that year by virtue of section 154.

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- (2) The cash equivalent of the benefit of the van and of any fuel provided for the van by reason of E's employment is not to be treated as E's earnings for that year if—
  - (a) M is chargeable to tax in respect of the van in that year by virtue of section 154, or
  - (b) where M's employment is an excluded employment, M had the benefit of the van in M's own right as an employee and condition A or B is met.
- (3) Condition A is met if equivalent vans are made available on the same terms to employees who—
  - (a) are in similar employment to M with the same employer, and
  - (b) are not members of the family or household of employees of that employer who are employed in employment which is not an excluded employment.
- (4) Condition B is met if the making available of an equivalent van is in accordance with the normal commercial practice for an employment of the kind held by M.]

#### Textual Amendments

- F30** S. 169A inserted (with effect in accordance with s. 80(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 14 para. 6](#)

### Orders

#### 170 Orders etc. relating to this Chapter

- (1) The Treasury may by order substitute a greater amount for that for the time being specified in—
  - (a) step 4 of section 121(1) (car: maximum interim sum),
  - (b) section 126(3)(d) (car: minimum price of later accessory),
  - (c) section 132(3)(b) (car: maximum contributions deduction),
  - (d) section 147(1)(b) (classic car: minimum value), or
  - (e) section 147(7)(b) (classic car: maximum contributions deduction).

[<sup>F31</sup>(1A) The Treasury may by order substitute a different amount for that for the time being specified in—

- (a) section 155(2)(a) (cash equivalent where van subject only to restricted private use by employee), and
- (b) section 155(3)(b) (cash equivalent in other cases).]

- (2) An order under subsection (1) [<sup>F32</sup>or (1A)] must specify the tax years to which it applies.
- (3) The Treasury may by order provide for a “lower threshold” different from that specified in the Table in section 139(4) (car with a CO<sub>2</sub> emissions figure) to apply for tax years beginning on or after [<sup>F33</sup>6th April 2006] or such later date as may be specified in the order.
- (4) The Treasury may by regulations provide for the value of the appropriate percentage as determined under sections 139 to 141 to be reduced—
  - (a) by such amount,

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- (b) in such circumstances, and
  - (c) subject to such conditions,
- as may be prescribed in the regulations.
- (5) The Treasury may by order substitute a different amount for that specified in section 150(1) (car fuel: cash equivalent) [<sup>F34</sup>or section 161(b) (van fuel: cash equivalent)].
- (6) An order under subsection (5) must specify the tax years to which it applies, being tax years beginning after that in which it is made.

#### Textual Amendments

- F31** S. 170(1A) inserted (with effect in accordance with s. 80(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 14 para. 7\(2\)](#)
- F32** Words in s. 170(2) inserted (with effect in accordance with s. 80(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 14 para. 7\(3\)](#)
- F33** Words in s. 170(3) substituted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [s. 138\(4\)](#)
- F34** Words in s. 170(5) inserted (with effect in accordance with s. 80(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 14 para. 7\(4\)](#)

### *Supplementary*

#### 171 Minor definitions: general

(1) In this Chapter—

“business travel”, in relation to any employee, means travelling the expenses of which, if incurred and paid by the employee, would (if Chapter 2 of Part 4 did not apply) be deductible under sections 337 to 342, section 353 or under Chapter 5 of Part 5 (other than section 377);

“diesel” means any diesel fuel within the definition in Article 2 of Directive [98/70/EC](#) of the European Parliament and of the Council;

“EC certificate of conformity” means a certificate of conformity issued by a manufacturer under any provision of the law of a Member State implementing Article 6 of Council Directive [70/156/EEC](#), as amended;

“EC type-approval certificate” means a type-approval certificate issued under any provision of the law of a Member State implementing Council Directive [70/156/EEC](#), as amended;

“relevant taxes” means any car tax, any value added tax, any customs or excise duty and any tax chargeable as if it were a customs duty;

“road fuel gas” means any substance which is gaseous at a temperature of 15°C and under a pressure of 1013.25 millibars, and which is for use as fuel in road vehicles;

“UK approval certificate” means a certificate issued under—

- (a) section 58(1) or (4) of the Road Traffic Act 1988 (c. 52), or
- (b) Article 31A(4) or (5) of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/154 (N.I. 1)).



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- (2) In this Chapter references to the date of first registration in relation to a car <sup>F35</sup> ... are to the date on which the vehicle was first registered under VERA 1994 or under corresponding legislation of any country or territory.
- (3) In this Chapter references to the age of a car <sup>F36</sup> ... at any time are to the interval between the date of first registration of the vehicle and that time.
- (4) In this Chapter “disabled person’s badge” means a badge—
  - (a) which is issued to a disabled person under section 21 of the Chronically Sick and Disabled Persons Act 1970 (c. 44) or section 14 of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978 (c. 53), or has effect as if it had been issued under one of those provisions, and
  - (b) which is not required to be returned to the issuing authority under or by virtue of the provision referred to in paragraph (a).

#### Textual Amendments

**F35** Words in s. 171(2) repealed (with effect in accordance with Sch. 42 Pt. 2(9) of the repealing Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(9\)](#)

**F36** Words in s. 171(3) repealed (with effect in accordance with Sch. 42 Pt. 2(9) of the repealing Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(9\)](#)

### 172 Minor definitions: equipment to enable a disabled person to use a car

- (1) In section 125(2)(c) “equipment to enable a disabled person to use a car” means equipment—
  - (a) which is designed solely for use by a chronically sick or disabled person, or
  - (b) which is made available for use with the car because it enables a disabled employee to use the car in spite of the disability.
- (2) In this section—

“disabled employee” means an employee who, at the time when the car is first made available to the employee, holds a disabled person’s badge, and

“the disability” means the disability entitling the disabled employee to hold the disabled person’s badge.

## CHAPTER 7

### TAXABLE BENEFITS: LOANS

#### Introduction

### 173 Loans to which this Chapter applies

- (1) This Chapter applies to a loan if it is an employment-related loan.
- (2) In this Chapter—
  - (a) “loan” includes any form of credit, and

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- (b) references to making a loan (and related expressions) include arranging, guaranteeing or in any way facilitating a loan.
- (3) Sections 288 and 289 make provision for exemption and relief for certain bridging loans connected with employment moves.

#### **174 Employment-related loans**

- (1) For the purposes of this Chapter an employment-related loan is a loan—
  - (a) made to an employee or a relative of an employee, and
  - (b) of a class described in subsection (2).
- (2) For the purposes of this Chapter the classes of employment-related loan are—
  - A*  
A loan made by the employee’s employer.
  - B*  
A loan made by a company or partnership over which the employee’s employer had control.
  - C*  
A loan made by a company or partnership by which the employer (being a company or partnership) was controlled.
  - D*  
A loan made by a company or partnership which was controlled by a person by whom the employer (being a company or partnership) was controlled.
  - E*  
A loan made by a person having a material interest in—
    - (a) a close company which was the employer, had control over the employer or was controlled by the employer, or
    - (b) a company or partnership controlling that close company.
- (3) In this section—
  - “employee” includes a prospective employee, and
  - “employer” includes a prospective employer.
- (4) References in this section to a loan being made by a person extend to a person who—
  - (a) assumes the rights and liabilities of the person who originally made the loan, or
  - (b) arranges, guarantees or in any way facilitates the continuation of a loan already in existence.
- (5) A loan is not an employment-related loan if—
  - (a) it is made by an individual in the normal course of the individual’s domestic, family or personal relationships, or
  - (b) it is made to a relative of the employee and the employee derives no benefit from it.

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- (6) For the purposes of this section a person (“X”) is a relative of another (“Y”) if X is—
- (a) Y’s spouse,
  - (b) a parent, child or remoter relation in the direct line either of Y or of Y’s spouse,
  - (c) a brother or sister of Y or of Y’s spouse, or
  - (d) the spouse of a person falling within paragraph (b) or (c).

#### *Benefit of taxable cheap loan treated as earnings*

### **175 Benefit of taxable cheap loan treated as earnings**

- (1) The cash equivalent of the benefit of an employment-related loan is to be treated as earnings from the employee’s employment for a tax year if the loan is a taxable cheap loan in relation to that year.
- (2) For the purposes of this Chapter an employment-related loan is a “taxable cheap loan” in relation to a particular tax year if—
  - (a) there is a period consisting of the whole or part of that year during which the loan is outstanding and the employee holds the employment,
  - (b) no interest is paid on it for that year, or the amount of interest paid on it for that year is less than the interest that would have been payable at the official rate, and
  - (c) none of the exceptions in sections 176 to 179 apply.
- (3) The cash equivalent of the benefit of an employment-related loan for a tax year is the difference between—
  - (a) the amount of interest that would have been payable on the loan for that year at the official rate, and
  - (b) the amount of interest (if any) actually paid on the loan for that year.
- (4) If there are two or more employment-related loans, this section applies to each separately.
- (5) This section is subject to—
  - section 180 (threshold for benefit of loan to be treated as earnings);
  - section 186 (replacement loans).

### **176 Exception for loans on ordinary commercial terms**

- (1) A loan on ordinary commercial terms is not a taxable cheap loan.
- (2) In this section a “loan on ordinary commercial terms” means a loan—
  - (a) made by a person (“the lender”) in the ordinary course of a business carried on by the lender which includes—
    - (i) the lending of money, or
    - (ii) the supplying of goods or services on credit, and
  - (b) in relation to which condition A, B or C is met.
- (3) Condition A is met if—
  - (a) at the time the loan was made comparable loans were available to all those who might be expected to avail themselves of the services provided by the lender in the course of the lender’s business,

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- (b) a substantial proportion of the loans (consisting of the loan in question and the comparable loans) made by the lender at or about the time the loan in question was made were made to members of the public,
  - (c) the loan in question is held on the same terms as comparable loans generally made by the lender to members of the public at or about the time the loan in question was made, and
  - (d) where those terms differ from the terms applicable immediately after the loan in question was first made, they were imposed in the ordinary course of the lender's business.
- (4) For the purposes of condition A a loan is comparable to another loan if it is made for the same or similar purposes and on the same terms and conditions.
- (5) Condition B is met if—
- (a) the loan has been varied before 6th April 2000,
  - (b) a substantial proportion of the relevant loans were made to members of the public,
  - (c) the loan in question is held on the same terms as relevant loans generally made by the lender to members of the public at or about the relevant time, and
  - (d) where those terms differ from the terms applicable immediately after the relevant time, they were imposed in the ordinary course of the lender's business.
- (6) Condition C is met if—
- (a) the loan has been varied on or after 6th April 2000,
  - (b) a substantial proportion of the relevant loans were made to members of the public,
  - (c) at the relevant time members of the public who had loans from the lender for similar purposes had a right to vary their loans on the same terms and conditions as applied in relation to the variation of the loan in question,
  - (d) the loan in question as varied is held on the same terms as any existing loans so varied, and
  - (e) where those terms differ from the terms applicable immediately after the relevant time, they were imposed in the ordinary course of the lender's business.
- (7) For the purposes of condition B and C—
- (a) the “relevant time” is the time of the variation of the loan in question, and
  - (b) the “relevant loans” are—
    - (i) the loan in question,
    - (ii) any existing loans which were varied at or about the relevant time so as to be held on the same terms as the loan in question after it was varied, and
    - (iii) any new loans which were made by the lender at or about that time and are held on those terms.
- (8) No account is to be taken of amounts which are incurred on fees, commission or other incidental expenses by the person to whom a loan is made for the purpose of obtaining the loan—
- (a) in determining for the purposes of condition A whether loans made by a lender before 1st June 1994 are made or held on the same terms or conditions, or

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- (b) in determining for the purposes of condition B or C whether rights to vary loans are exercisable on the same terms and conditions or loans are held on the same terms.
- (9) No account is to be taken of amounts which are incurred on penalties, interest or similar amounts by the person to whom a loan is made as a result of varying the loan in determining for the purposes of condition B or C whether rights to vary loans are exercisable on the same terms and conditions or loans are held on the same terms.
- (10) For the purposes of this section a “member of the public” means a member of the public at large with whom the lender deals at arm’s length.

### **177 Exceptions for loans at fixed rate of interest**

- (1) A fixed rate loan made on or after 6th April 1978 is not a taxable cheap loan by reason only of an increase in the official rate of interest since the year in which the loan was made if the condition in subsection (2) is met.
- (2) The condition in this subsection is met if the amount of interest paid on the loan for the tax year in which it was made was equal to or greater than the interest that would have been payable at the official rate for that year.
- (3) A fixed rate loan made before 6th April 1978 is not a taxable cheap loan if the condition in subsection (4) is met.
- (4) The condition in this subsection is met if the rate of interest for the loan is equal to or greater than the rate which could have been expected to apply to a loan made—
  - (a) at the same time as the loan in question,
  - (b) on the same terms (other than as to the rate of interest), and
  - (c) between persons not connected with each other dealing at arm’s length.
- (5) In this section a “fixed rate loan” means a loan—
  - (a) made for a fixed period which cannot be changed, and
  - (b) made at a fixed rate of interest which cannot be changed during that period.

### **178 Exception for loans where interest qualifies for tax relief**

A loan is not a taxable cheap loan in relation to a particular tax year if, assuming interest is paid on the loan for that year (whether or not it is in fact paid), the whole of that interest—

- (a) is eligible for relief under section 353 of ICTA (general provision for relief for payments of interest, excluding MIRAS),
- (b) would be eligible for relief under that section but for the fact that it is a payment of relevant loan interest to which section 369 of ICTA applies (mortgage interest payable under deduction of tax),
- (c) is deductible in computing the amount of the profits to be charged [<sup>F37</sup>to tax] in respect of a trade, profession or vocation carried on [<sup>F38</sup>wholly or partly in the United Kingdom] by the person to whom the loan is made, or
- (d) is deductible in computing the amount of the profits to be charged [<sup>F39</sup>to tax in respect of a UK property business, or a Schedule A business,] carried on by that person.

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### Textual Amendments

- F37** Words in s. 178(c) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 587\(a\)\(i\)](#) (with Sch. 2)
- F38** Words in s. 178(c) inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 587\(a\)\(ii\)](#) (with Sch. 2)
- F39** Words in s. 178(d) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 587\(b\)](#) (with Sch. 2)

## 179 Exception for certain advances for necessary expenses

- (1) An advance by an employer to an employee for the purpose of paying for—
- (a) necessary expenses, or
  - (b) incidental overnight expenses,
- is not a taxable cheap loan in relation to a particular tax year if the following conditions are met.
- (2) The conditions are—
- (a) that at all times in the tax year in question the amount outstanding on such advances made by the employer to the employee does not exceed £1,000,
  - (b) that the advance is spent within 6 months after the date on which it is made, and
  - (c) that the employee accounts to the employer at regular intervals for the expenditure of the amount advanced.
- (3) If, on an application made by the employer, the Inland Revenue are satisfied that there is good reason to do so in the case of a particular advance, they may authorise that either or both of the following limits are increased in relation to that advance—
- (a) the sum of money specified in subsection (2)(a);
  - (b) the time limit specified in subsection (2)(b).
- (4) An application under subsection (3)—
- (a) must be in writing, and
  - (b) must contain such particulars and be supported by such evidence as the Inland Revenue may require.
- (5) In this section “necessary expenses” are expenses (including travel expenses) which—
- (a) the employee is obliged to incur and pay as holder of the employment, and
  - (b) are necessarily incurred in the performance of the duties of the employment.
- (6) In this section “incidental overnight expenses” are expenses which—
- (a) are incidental to the employee’s absence from the place where the employee normally lives,
  - (b) relate to a continuous period of such absence in relation to which the overnight stay conditions are met, and
  - (c) would not be deductible under Part 5 if the employee incurred and paid them and Chapter 2 of Part 4 (mileage allowances and passenger payments) did not apply.
- (7) In subsection (6)(b) “the overnight stay conditions” has the same meaning as in section 240 (exemption for incidental overnight expenses) (see section 240(4)).

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## 180 Threshold for benefit of loan to be treated as earnings

- (1) The cash equivalent of the benefit of an employment-related loan is not to be treated as earnings of the employment for a tax year under section 175(1)—
  - (a) if the normal £5,000 threshold is not exceeded, or
  - (b) where the loan is a non-qualifying loan and that threshold is exceeded, if the £5,000 threshold for non-qualifying loans is not exceeded.
- (2) The normal £5,000 threshold is not exceeded if at all times in the year the amount outstanding on the loan (or, if two or more employment-related loans which are taxable cheap loans are outstanding in the year, the aggregate of the amount outstanding on them) does not exceed £5,000.
- (3) The £5,000 threshold for non-qualifying loans is not exceeded if at all times in the year the amount outstanding on the loan (or if two or more employment-related loans which are non-qualifying loans are outstanding in the year, the aggregate of the amounts outstanding on them) does not exceed £5,000.
- (4) In this section a “non-qualifying loan” means a taxable cheap loan which is not a qualifying loan.
- (5) For the purposes of this section a loan is a “qualifying loan” in relation to a particular tax year if, assuming interest is paid on the loan for that year (whether or not it is in fact paid), the whole or part of that interest—
  - (a) is eligible for relief under section 353 of ICTA (general provision for relief for payments of interest, excluding MIRAS),
  - (b) would be eligible for relief under that section but for the fact that it is a payment of relevant loan interest to which section 369 of ICTA applies (mortgage interest payable under deduction of tax),
  - (c) is deductible in computing the amount of the profits to be charged [<sup>F40</sup>to tax] in respect of a trade, profession or vocation carried on [<sup>F41</sup>wholly or partly in the United Kingdom] by the person to whom the loan is made, or
  - (d) is deductible in computing the amount of the profits to be charged [<sup>F42</sup>to tax in respect of a UK property business, or a Schedule A business,] carried on by that person.

### Textual Amendments

- F40** Words in s. 180(5)(c) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 588\(a\)\(i\)](#) (with Sch. 2)
- F41** Words in s. 180(5)(c) inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 588\(a\)\(ii\)](#) (with Sch. 2)
- F42** Words in s. 180(5)(d) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 588\(b\)](#) (with Sch. 2)

### *Calculation of amount of interest at official rate*

## 181 The official rate of interest

- (1) “The official rate of interest” for the purposes of this Chapter means the rate applicable under section 178 of FA 1989 (general power of Treasury to specify rates of interest).

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- (2) Regulations under that section may make different provision in relation to a loan if—
- (a) it was made in the currency of a country or territory outside the United Kingdom, and
  - (b) the employee normally lives in that country or territory, and has actually lived there at some time in the period of 6 years ending with the tax year in question.
- (3) Subsection (2) does not affect the general power under section 178(3) of FA 1989 to make different provision for different purposes.

## 182 Normal method of calculation: averaging

The normal method of calculating for the purposes of this Chapter the amount of interest that would be payable on a loan for a tax year at the official rate is as follows.

### *Step 1*

Calculate the average amount of the loan outstanding during the tax year—

1. Find the maximum amount of the loan outstanding on 5th April preceding the tax year or, if the loan was made in the tax year, on the date it was made.
2. Find the maximum amount outstanding on 5th April of the tax year or, if the loan was discharged in the tax year, on the date of discharge.
3. Add these amounts together and divide the result by 2.

### *Step 2*

If the official rate of interest changed during the period in the tax year when the loan was outstanding, calculate the average official rate of interest for that period as follows—

1. Multiply each official rate of interest in force during the period by the number of days when it is in force.
2. Add these products together.
3. Divide the result by the number of days in the period.

### *Step 3*

Calculate the amount of interest that would be payable on the loan for the tax year at the official rate as follows—

$$A \times I \times \frac{M}{12}$$

where—

A is the average amount of the loan outstanding during the tax year obtained from step 1,

I is the official rate of interest in force during the period in the tax year when the loan was outstanding or, if the official rate changed, the average official rate of interest obtained from step 2, and

M is the number of whole months during which the loan was outstanding in the year.

For this purpose a month begins on the sixth day of the calendar month.



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### **183 Alternative method of calculation**

(1) The alternative method of calculating for the purposes of this Chapter the amount of interest that would be payable on a loan for a tax year at the official rate applies for a tax year—

- (a) if the Inland Revenue so require, by notice to the employee, or
- (b) if the employee so elects, by notice to the Inland Revenue.

(2) Notice may be given on or before the first anniversary of the normal self-assessment filing date for the tax year in relation to which the question arises whether the loan is a taxable cheap loan.

(3) The alternative method is as follows—

#### *Step 1*

Find for each day in the tax year in question the maximum amount of the loan outstanding on that day and multiply it by the official rate of interest in force on that day.

#### *Step 2*

Add together each of the amounts obtained under step 1.

#### *Step 3*

Divide the result by the number of days in the tax year.

(4) Where in any tax year the cash equivalent of the benefit of the same taxable cheap loan is to be treated as earnings of two or more employees then, for the purposes of determining the cash equivalent of the benefit of the loan, the alternative method applies if—

- (a) the notice under subsection (1)(a) is given to all those employees, or
- (b) the notice under subsection (1)(b) is given by all those employees.

#### *Supplementary provisions relating to taxable cheap loans*

### **184 Interest treated as paid**

(1) This section applies where the cash equivalent of the benefit of a taxable cheap loan is treated as earnings from an employee's employment for a tax year under section 175(1).

(2) The employee is to be treated for the purposes of the Tax Acts as having paid interest on the loan in that year equal to the cash equivalent.

(3) But the employee is not to be treated as having paid that interest for the purposes of this Chapter or of any of the other Chapters of this Part listed in section 216(4) (provisions of the benefits code which do not apply to lower-paid employment).

(4) The interest is to be treated—

- (a) as accruing during the period in the tax year during which the employee holds the employment and the loan is outstanding, and
- (b) as paid by the employee at the end of the period.

(5) The interest is not to be treated—

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- (a) as income of the person making the loan, or
- (b) as relevant loan interest to which section 369 of ICTA applies (mortgage interest payable under deduction of tax).

### **185 Apportionment of cash equivalent in case of joint loan etc.**

Where in any tax year the cash equivalent of the benefit of the same taxable cheap loan is to be treated as earnings of two or more employees—

- (a) the cash equivalent of the benefit of the loan (determined in accordance with the provisions of this Chapter) is to be apportioned between them in a just and reasonable manner, and
- (b) the portion allocated to each employee is to be treated as the cash equivalent of the benefit of the loan so far as that employee is concerned.

### **186 Replacement loans**

- (1) This section applies where an employment-related loan (“the original loan”) is replaced, directly or indirectly, by—
  - (a) a further employment-related loan, or
  - (b) a loan which is not an employment-related loan but which in turn is, in the same tax year or within 40 days after the end of the tax year, replaced, directly or indirectly, by a further employment-related loan.
- (2) In such a case, for the purposes of calculating the cash equivalent of the benefit of the original loan under section 175(3), section 182 (normal method of calculating interest at the official rate) applies as if the replacement loan, or each of the replacement loans, were the same loan as the original loan.
- (3) Where section 182 is applied as modified by subsection (2) then for the purposes of section 175(3)(b) the amount of interest actually paid on the loan for the tax year in question is the total of—
  - (a) the amount of interest actually paid on the original loan for that year, and
  - (b) the amount of interest actually paid on the replacement loan or on each of the replacement loans for that year.
- (4) In this section a “further employment-related loan” means a loan which is an employment-related loan made in relation to—
  - (a) the same or other employment with the person who is the employer in relation to the original loan, or
  - (b) employment with a person who is connected with that employer.

### **187 Aggregation of loans by close company to director**

- (1) This section applies where, in relation to any tax year, there are employment-related loans between the same lender and borrower which are aggregable with each other.
- (2) The lender may elect for aggregation to apply for that tax year in the case of the borrower.
- (3) The effect of the election is that all the aggregable loans are to be treated as a single loan for the purposes of—
  - section 175 (benefit of taxable cheap loan treated as earnings),

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the provisions of this Chapter relating to the calculation of the cash equivalent of the benefit of a taxable cheap loan, and section 184 (interest treated as paid).

- (4) For this purpose loans are aggregable for any tax year if they are made in the same currency and all the following conditions are met in relation to each of them—
- (a) there is a time in the tax year when—
    - (i) the loan is outstanding,
    - (ii) the lender is a close company, and
    - (iii) the borrower is a director of that company;
  - (b) at all times in the tax year the rate of interest on the loan is less than the official rate applying at that time;
  - (c) the loan is not a qualifying loan within the meaning of section 180 (see section 180(5)).
- (5) An election under this section must be made by the lender in a notice given—
- (a) to the Inland Revenue, and
  - (b) before 7th July after the end of the tax year to which the election relates.

*Loan released or written off*

**188 Loan released or written off: amount treated as earnings**

- (1) If—
- (a) the whole or part of an employment-related loan is released or written off in a tax year, and
  - (b) at the time when it is released or written off the employee holds the employment in relation to which the loan is an employment-related loan (“employment E”),
- the amount released or written off is to be treated as earnings from the employment for that year.
- (2) But if the employment has terminated or become an excluded employment and there was a time when—
- (a) the whole or part of the loan was outstanding,
  - (b) the employee held the employment, and
  - (c) it was not an excluded employment,
- subsection (1) applies as if the employment had not terminated or become an excluded employment.
- (3) Where subsection (2) applies, any loan which replaces directly or indirectly the employment-related loan is to be treated as an employment-related loan in relation to employment E if—
- (a) it would, if employment E had not terminated or become excluded employment, have been an employment-related loan in relation to employment E, and
  - (b) it is not an employment-related loan in relation to other employment.
- (4) This section is subject to section 189 (exception where double charge).

*Status: Point in time view as at 07/04/2005.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 23 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## 189 Exception where double charge

(1) Section 188 (loan released or written off: amount treated as earnings) does not apply if, by virtue of any other provision of the Income Tax Acts, the amount released or written off—

- (a) is employment income of the employee, or
- (b) is or is treated as income of the employee (or of the employee as a borrower) which is not employment income and upon which that person is liable to pay income tax.

This is subject to subsections (2) and (3).

(2) If, as a result of subsection (1), Chapter 3 of Part 6 (payments and benefits on termination of employment etc.) would be the only provision by virtue of which the amount released or written off would be income of the employee—

- (a) section 188 does apply, and
- (b) accordingly Chapter 3 of Part 6 does not apply.

(3) If—

- (a) an amount is treated as the employee's income under [<sup>F43</sup>section 633 of ITTOIA 2005 (capital sums paid to settlor by trustees of settlement)] in respect of a capital sum paid in relation to the release or writing-off of the loan, and
- (b) the amount released or written off exceeds the amount so treated as income, section 188 does apply but only the amount of the excess is to be treated as earnings from the employment for the tax year in question under that section.

### Textual Amendments

**F43** Words in s. 189(3)(a) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 589](#) (with Sch. 2)

### *General supplementary provisions*

## 190 Exclusion of charge after death of employee

(1) On the employee's death a taxable cheap loan is to be treated—

- (a) for the purposes of this Chapter as ceasing to be outstanding, and
- (b) for the purposes of section 182 (normal method of calculating interest at the official rate) as being discharged on the date of death.

(2) Section 188 (loan released or written off: amount treated as earnings) does not apply in relation to a release or writing off which takes effect on or after the death of the employee.

## 191 Claim for relief to take account of event after assessment

(1) A claim may be made for relief in the following cases.

(2) The first case is where—

- (a) the tax payable by an employee for a tax year in respect of a loan has been decided on the basis that, for the purposes of section 175 (benefit of taxable

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- cheap loan treated as earnings), the whole or part of the interest payable on the loan for that year was not paid, and
- (b) it is subsequently paid.
- (3) The second case is where—
- (a) the tax payable by an employee for a tax year in respect of a loan has been decided on that basis that, for the purposes of section 188 (loan released or written off: amount treated as earnings), the loan has been released or written off in that year, and
- (b) the whole or part of the loan is subsequently repaid.
- (4) The third case is where—
- (a) the tax payable by an employee for a tax year in respect of a loan has been decided on the basis that—
- (i) section 288 (limited exemption of certain bridging loans connected with employment moves), and
- (ii) section 289 (relief for certain bridging loans not qualifying for exemption under section 288),
- will not apply because the condition in section 288(1)(b) (which requires that the limit on the exemption under section 287(1) has not been reached) will not be met, and
- (b) that condition is met.
- (5) Where a claim is made under this section the tax payable is to be adjusted accordingly.

## <sup>F44</sup>CHAPTER 8

### TAXABLE BENEFITS: NOTIONAL LOANS IN RESPECT OF ACQUISITIONS OF SHARES

#### Textual Amendments

**F44** Pt. 3 Ch. 8 repealed (with effect in accordance with Sch. 22 para. 22(2) of the amending Act) by Finance Act 2003 (c. 14), Sch. 22 para. 22(1), **Sch. 43 Pt. 3(4)**

#### *Introduction*

#### **192 Application of this Chapter**

.....

#### *Acquisition of shares for less than market value*

#### **193 Notional loan where acquisition for less than market value**

.....

#### **194 The amount of the notional loan**

.....

*Status: Point in time view as at 07/04/2005.*

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**195 Discharge of notional loan: amount treated as earnings**

.....

*Supplementary provisions*

**196 Effects on other income tax charges**

.....

**197 Minor definitions**

.....

**<sup>F45</sup>CHAPTER 9**

TAXABLE BENEFITS: DISPOSALS OF SHARES FOR MORE THAN MARKET VALUE

**Textual Amendments**

**F45** [Pt. 3 Ch. 9](#) repealed (with effect in accordance with Sch. 22 para. 23(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 23\(1\)](#), [Sch. 43 Pt. 3\(4\)](#)

**198 Shares to which this Chapter applies**

.....

**199 Disposal for more than market value: amount treated as earnings**

.....

**200 Minor definitions**

.....

**CHAPTER 10**

TAXABLE BENEFITS: RESIDUAL LIABILITY TO CHARGE

*Introduction*

**201 Employment-related benefits**

- (1) This Chapter applies to employment-related benefits.
- (2) In this Chapter—  
     “benefit” means a benefit or facility of any kind;

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“employment-related benefit” means a benefit, other than an excluded benefit, which is provided in a tax year—

- (a) for an employee, or
- (b) for a member of an employee’s family or household,

by reason of the employment. For the definition of “excluded benefit” see section 202.

- (3) A benefit provided by an employer is to be regarded as provided by reason of the employment unless—
  - (a) the employer is an individual, and
  - (b) the provision is made in the normal course of the employer’s domestic, family or personal relationships.
- (4) For the purposes of this Chapter it does not matter whether the employment is held at the time when the benefit is provided so long as it is held at some point in the tax year in which the benefit is provided.
- (5) References in this Chapter to an employee accordingly include a prospective or former employee.

## **202 Excluded benefits**

- (1) A benefit is an “excluded benefit” for the purposes of this Chapter if—
  - (a) any of Chapters 3 to 9 of the benefits code applies to the benefit,
  - (b) any of those Chapters would apply to the benefit but for an exception, or
  - (c) the benefit consists in the right to receive, or the prospect of receiving, sums treated as earnings under section 221 (payments where employee absent because of sickness or disability).
- (2) In this section “exception”, in relation to the application of a Chapter of the benefits code to a benefit, means any enactment in the Chapter which provides that the Chapter does not apply to the benefit.

But for this purpose section 86 (transport vouchers under pre-26th March 1982 arrangements) is not an exception.

*Cash equivalent of benefit treated as earnings*

## **203 Cash equivalent of benefit treated as earnings**

- (1) The cash equivalent of an employment-related benefit is to be treated as earnings from the employment for the tax year in which it is provided.
- (2) The cash equivalent of an employment-related benefit is the cost of the benefit less any part of that cost made good by the employee to the persons providing the benefit.
- (3) The cost of an employment-related benefit is determined in accordance with section 204 unless—
  - (a) section 205 provides that the cost is to be determined in accordance with that section, or
  - (b) section 206 provides that the cost is to be determined in accordance with that section.

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### *Determination of the cost of the benefit*

#### **204 Cost of the benefit: basic rule**

The cost of an employment-related benefit is the expense incurred in or in connection with provision of the benefit (including a proper proportion of any expense relating partly to provision of the benefit and partly to other matters).

#### **205 Cost of the benefit: asset made available without transfer**

(1) The cost of an employment-related benefit (“the taxable benefit”) is determined in accordance with this section if—

- (a) the benefit consists in—
  - (i) an asset being placed at the disposal of the employee, or at the disposal of a member of the employee’s family or household, for the employee’s or member’s use, or
  - (ii) an asset being used wholly or partly for the purposes of the employee or a member of the employee’s family or household, and
- (b) there is no transfer of the property in the asset.

(2) The cost of the taxable benefit is the higher of—

- (a) the annual value of the use of the asset, and
- (b) the annual amount of the sums, if any, paid by those providing the benefit by way of rent or hire charge for the asset,

together with the amount of any additional expense.

(3) For the purposes of subsection (2), the annual value of the use of an asset is—

- (a) in the case of land, its annual rental value;
- (b) in any other case, 20% of the market value of the asset at the time when those providing the taxable benefit first applied the asset in the provision of an employment-related benefit (whether or not the person provided with that benefit is also the person provided with the taxable benefit).

If those providing the taxable benefit first applied the asset in the provision of an employment-related benefit before 6th April 1980, paragraph (b) is to be read as if the reference to 20% were a reference to 10%.

(4) In this section “additional expense” means the expense incurred in or in connection with provision of the taxable benefit (including a proper proportion of any expense relating partly to provision of the benefit and partly to other matters), other than—

- (a) the expense of acquiring or producing the asset incurred by the person to whom the asset belongs, and
- (b) any rent or hire charge payable for the asset by those providing the asset.

#### **206 Cost of the benefit: transfer of used or depreciated asset**

(1) The cost of an employment-related benefit is determined in accordance with this section if—

- (a) the benefit consists in the transfer of an asset, and
- (b) the asset has been used, or has depreciated, since the person transferring the asset (“the transferor”) acquired or produced it.



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- (2) The cost of the benefit is the market value of the asset at the time of the transfer.
- (3) But the cost of the benefit (“the current benefit”) is the higher of the market value of the asset at the time of the transfer and the amount calculated in accordance with subsection (5) if—
- (a) the asset is not [F46 an excluded asset (see subsection (6))],
  - (b) the asset has previously been applied in the provision of a relevant employment-related benefit (whether or not the person provided with that benefit is also the transferee), and
  - (c) the transferor first applied the asset in the provision of an employment-related benefit after 5th April 1980.

(4) In this section “relevant employment-related benefit” means an employment-related benefit the cost of which was to be determined in accordance with section 205.

(5) The amount referred to in subsection (3) is calculated in accordance with the following steps—

*Step 1*

Determine the tax years in which the asset was applied in the provision of a relevant employment-related benefit (including, if appropriate, the current tax year).

*Step 2*

Determine the cost of the benefit for each of those tax years in accordance with section 205.

*Step 3*

Calculate the total of the amounts determined under step 2.

*Step 4*

Calculate the market value of the asset at the time when the transferor first applied it in the provision of an employment-related benefit.

*Step 5*

Deduct the total calculated under step 3 from the market value calculated under step 4.

The result is the amount referred to in subsection (3).

[F47(6) An excluded asset is—

- (a) a car (within the meaning of Chapter 6),
- (b) computer equipment that has previously been applied as mentioned in subsection (3)(b) in circumstances in which the conditions set out in section 320 were met, or
- (c) a cycle or cyclist's safety equipment that has previously been so applied in circumstances in which the conditions set out in section 244 were met.]

**Textual Amendments**

**F46** Words in s. 206(3)(a) substituted (with effect in accordance with s. 17(4) of the amending Act) by Finance Act 2005 (c. 7), s. 17(2)

*Status: Point in time view as at 07/04/2005.*

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**F47** S. 206(6) inserted (with effect in accordance with s. 17(4) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 17\(3\)](#)

### *Supplementary provisions*

#### **207 Meaning of “annual rental value”**

- (1) For the purposes of this Chapter the “annual rental value” of land is the rent which might reasonably be expected to be obtained on a letting from year to year if—
- (a) the tenant undertook to pay all taxes, rates and charges usually paid by a tenant, and
  - (b) the landlord undertook to bear the costs of the repairs and insurance and other expenses (if any) necessary for maintaining the land in a state to command the rent.
- (2) For the purposes of subsection (1) that rent—
- (a) is to be taken to be the amount that might reasonably be expected to be so obtained in respect of the letting, and
  - (b) is to be calculated on the basis that the only amounts that may be deducted in respect of services provided by the landlord are amounts in respect of the cost to the landlord of providing any relevant services.
- (3) If the land is of a kind that might reasonably be expected to be let on terms under which—
- (a) the landlord is to provide any services which are either—
    - (i) relevant services, or
    - (ii) the repair, insurance or maintenance of any premises which do not form part of the land but belong to or are occupied by the landlord, and
  - (b) amounts are payable in respect of the services in addition to the rent,
- the rent to be established under subsection (1) in respect of the land is to be increased under subsection (4).
- (4) That rent is to include—
- (a) where the services are relevant services, so much of the additional amounts as exceeds the cost to the landlord of providing the services;
  - (b) where the services are within subsection (3)(a)(ii), the whole of the additional amounts.
- (5) In this section “relevant service” means a service other than the repair, insurance or maintenance of the land or of any other land.

#### **208 Meaning of “market value”**

For the purposes of this Chapter the market value of an asset at any time is the price which the asset might reasonably be expected to fetch on a sale in the open market at that time.

#### **209 Meaning of “persons providing benefit”**

For the purposes of this Chapter the persons providing a benefit are the person or persons at whose cost the benefit is provided.

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## **210 Power to exempt minor benefits**

- (1) The Treasury may make provision by regulations for exempting from the application of this Chapter such minor benefits as may be specified in the regulations.
- (2) An exemption conferred by such regulations is conditional on the benefit being made available to the employer's employees generally on similar terms.

### *Special rules for scholarships*

## **211 Special rules for scholarships: introduction**

- (1) Sections 212 to 214 supplement the preceding provisions of this Chapter in the following ways—
  - section 212 provides for certain scholarships provided under arrangements entered into by an employer or a connected person to be regarded as provided by reason of an employment;
  - section 213 provides that this Chapter does not apply to certain scholarships provided under a trust fund or a scheme;
  - section 214 provides a different method of determining the cost of an employment-related benefit if it consists in the provision of a scholarship from a trust fund.
- (2) Section 215 limits the extent to which section 331 of ICTA (exemption for scholarship income) applies to a scholarship whose provision constitutes an employment-related benefit.
- (3) In this section and sections 212 to 215 “scholarship” includes a bursary, exhibition or other similar educational endowment.

## **212 Scholarships provided under arrangements entered into by employer or connected person**

- (1) A scholarship which is provided for a member of an employee's family or household is to be regarded for the purposes of this Chapter as provided by reason of the employment if it is provided under arrangements entered into by—
  - (a) the employer, or
  - (b) a person connected with the employer.
- (2) Subsection (1) applies whether or not the arrangements require the employer or the connected person to contribute directly or indirectly to the cost of providing the scholarship.
- (3) A scholarship is not to be regarded as provided by reason of an employment by virtue of subsection (1) if—
  - (a) the employer is an individual, and
  - (b) the arrangements are made in the normal course of the employer's domestic, family or personal relationships.
- (4) This section is without prejudice to section 201(3).

*Status: Point in time view as at 07/04/2005.*

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### **213 Exception for certain scholarships under trusts or schemes**

- (1) This Chapter does not apply to an employment-related benefit consisting in the provision of a scholarship if conditions A, B, C and D are met.
- (2) Condition A is that the scholarship would not be regarded as provided by reason of the employment if section 201(3) and section 212 were disregarded.
- (3) Condition B is that the holder of the scholarship is a full-time student.
- (4) Condition C is that the scholarship is provided from a trust fund or under a scheme.
- (5) Condition D is that, in the tax year in which the scholarship is provided, not more than 25% of the total amount of relevant payments is attributable to scholarships provided by reason of a person's employment.
- (6) For the purposes of conditions B and D "full-time student" means a person who is in full-time education at a university, college, school or other educational establishment.
- (7) For the purposes of condition D—
  - "employment" includes any employment within the meaning of the employment income Parts (see section 4), whether or not it is a taxable employment under Part 2;
  - "relevant payments" means the payments made from the fund or scheme mentioned in condition C in respect of scholarships held by full-time students.

### **214 Scholarships: cost of the benefit**

If an employment-related benefit consists in the provision of a scholarship from a trust fund—

- (a) section 204 does not apply, and
- (b) the cost of the benefit is the total of the payments made from the fund to the person holding the scholarship.

### **215 Limitation of exemption for scholarship income in section 331 of ICTA**

If an employment-related benefit consists in the provision of a scholarship, section 331(1) of [<sup>F48</sup>section 776(1) of ITTOIA 2005] (exemption for scholarship income) applies only in relation to the holder of the scholarship.

#### **Textual Amendments**

- F48** Words in s. 215 substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 590](#) (with [Sch. 2](#))

*Status: Point in time view as at 07/04/2005.*

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## CHAPTER 11

### TAXABLE BENEFITS: EXCLUSION OF LOWER-PAID EMPLOYMENTS FROM PARTS OF BENEFITS CODE

#### *Introduction*

#### **216 Provisions not applicable to lower-paid employments**

- (1) The Chapters of the benefits code listed in subsection (4) do not apply to an employment in relation to a tax year if—
- it is lower-paid employment in relation to that year (see section 217), and
  - condition A or B is met.
- (2) Condition A is that the employee is not employed as a director of a company.
- (3) Condition B is that the employee is employed as a director of a company but has no material interest in the company and either—
- the employment is as a full-time working director, or
  - the company is non-profit-making or is established for charitable purposes only.
- “Non-profit-making” means that the company does not carry on a trade and its functions do not consist wholly or mainly in the holding of investments or other property.
- (4) The Chapters referred to in subsection (1) are—
- Chapter 3 (taxable benefits: expenses payments);
  - Chapter 6 (taxable benefits: cars, vans and related benefits);
  - Chapter 7 (taxable benefits: loans);
  - F49 ...
  - F49 ...
  - Chapter 10 (taxable benefits: residual liability to charge).
- (5) Subsection (1)—
- means that in any of those Chapters a reference to an employee does not include an employee whose employment is within the exclusion in that subsection, if the context is such that the reference is to an employee in relation to whom the Chapter applies, but
  - does not restrict the meaning of references to employees in other contexts.
- (6) Subsection (1) has effect subject to—
- section 188(2) (discharge of loan: where employment becomes lower-paid),
  - F50 ...
  - F50 ...
  - section 220 (employment in two or more related employments).

#### **Textual Amendments**

**F49** S. 216(4) entries repealed (with effect in accordance with Sch. 22 para. 24(4) of the amending Act) by Finance Act 2003 (c. 14), Sch. 22 para. 24(2), Sch. 43 Pt. 3(4)

*Status: Point in time view as at 07/04/2005.*

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**F50** S. 216(6) entries repealed (with effect in accordance with Sch. 22 para. 24(4) of the amending Act) by Finance Act 2003 (c. 14), Sch. 22 para. 24(3), **Sch. 43 Pt. 3(4)**

### *What is lower-paid employment*

#### **217 Meaning of “lower-paid employment”**

- (1) For the purposes of this Chapter an employment is “lower-paid employment” in relation to a tax year if the earnings rate for the employment for the year (calculated under section 218) is less than £8,500.
- (2) Subsection (1) is subject to section 220 (employment in two or more related employments).

#### **218 Calculation of earnings rate for a tax year**

- (1) For any tax year the earnings rate for an employment is to be calculated as follows—

##### *Step 1*

Find the total of the following amounts—

- (a) the total amount of the earnings from the employment for the year within Chapter 1 of this Part,
- (b) the total of any amounts that are treated as earnings from the employment for the year under the benefits code (see subsections (2) and (3)),
- (c) the total of any amounts that are treated as earnings from the employment for the year under Chapter 12 of this Part (payments treated as earnings), and
- (d) in the case of an employment within section 56(2) (deemed employment of worker by intermediary), the amount of the deemed employment payment for the year (see section 54),

excluding any exempt income.

##### *Step 2*

Add to that total any extra amount required to be added for the year by section 219 (extra amounts to be added in connection with a car).

##### *Step 3*

Subtract the total amount of any authorised deductions (see subsection (4)) from the result of step 2.

##### *Step 4*

The earnings rate for the employment for the year is given by the formula—

$$R \times \frac{Y}{E}$$

where—

R is the result of step 3,

Y is the number of days in the year, and

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E is the number of days in the year when the employment is held.

- (2) Section 216(1) (provisions not applicable to lower-paid employment) is to be disregarded for the purpose of determining any amount under step 1.
- (3) If the benefit of living accommodation is to be taken into account under step 1, the cash equivalent is to be calculated in accordance with section 105 (even if the cost of providing the accommodation exceeds £75,000).
- (4) For the purposes of step 3 “authorised deduction” means any deduction that would (assuming it was an amount of taxable earnings) be allowed from any amount within step 1 under—
  - section 346 (employee liabilities),
  - section 352 (agency fees paid by entertainers),
  - section 355 (corresponding payments by non-domiciled employees with foreign employers),
  - section 368 (fixed sum deductions from earnings payable out of public revenue),
  - section 370 (travel costs and expenses where duties performed abroad: employee’s travel),
  - section 371 (travel costs and expenses where duties performed abroad: visiting spouse’s or child’s travel),
  - section 373 (non-domiciled employee’s travel costs and expenses where duties performed in UK),
  - section 374 (non-domiciled employee’s spouse’s or child’s travel costs and expenses where duties performed in UK),
  - section 376 (foreign accommodation and subsistence costs and expenses (overseas employments)),
  - section 377 (costs and expenses in respect of personal security assets and services),
  - section 713 (payroll giving to charities),
  - section 592(7) of ICTA (contributions to exempt approved schemes),
  - section 594 of ICTA (contributions to exempt statutory schemes), or
  - section 262 of CAA 2001 (capital allowances to be given effect by treating them as deductions).

## **219 Extra amounts to be added in connection with a car**

- (1) The provisions of this section apply for the purposes of section 218(1) in the case of a tax year in which a car is made available as mentioned in section 114(1) (cars, vans and related benefits) by reason of the employment.
- (2) Subsection (3) applies if in the tax year—
  - (a) an alternative to the benefit of the car is offered, and
  - (b) the amount that would be earnings within Chapter 1 of this Part if the benefit of the car were to be determined by reference to the alternative offered exceeds the benefit code earnings (see subsection (4)).
- (3) The amount of the excess is an extra amount to be added under step 2 in section 218(1).
- (4) For the purposes of subsection (2) “the benefit code earnings” is the total for the year of—

*Status: Point in time view as at 07/04/2005.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 23 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) the cash equivalent of the benefit of the car (calculated in accordance with Chapter 6 of this Part), and
  - (b) the cash equivalent (calculated in accordance with that Chapter) of the benefit of any fuel provided for the car by reason of the employment.
- (5) Subsection (6) applies if in the tax year there would be an amount of general earnings consisting of—
- (a) earnings within Chapter 1 of this Part, or
  - (b) an amount treated as earnings from the employment under Chapter 3 (expenses payments) or Chapter 4 (vouchers and credit-tokens) of this Part, if section 239 or 269 (exemptions in respect of payments or benefits connected with taxable cars etc.) did not apply to the discharge of a liability, or to a payment or benefit, in connection with the car.
- (6) The amount of general earnings mentioned in subsection (5) is an extra amount to be added under step 2 in section 218(1).
- (7) Section 216(1) (provisions not applicable to lower-paid employment) is to be disregarded for the purpose of determining any amount under this section.

#### *Treatment of related employments*

### **220 Related employments**

- (1) This section applies if a person is employed in two or more related employments.
- (2) None of the employments is to be regarded as lower-paid employment in relation to a tax year if—
- (a) the total of the earnings rates for the employments for the year (calculated in each case under section 218) is £8,500 or more, or
  - (b) any of them is an employment falling outside the exclusion contained in section 216(1) (provisions not applicable to lower-paid employment).
- (3) For the purposes of this section two employments are “related” if—
- (a) both are with the same employer, or
  - (b) one is with a body or partnership (“A”) and the other is either—
    - (i) with an individual, partnership or body that controls A (“B”), or
    - (ii) with another partnership or body also controlled by B.

## **CHAPTER 12**

### PAYMENTS TREATED AS EARNINGS

### **221 Payments where employee absent because of sickness or disability**

- (1) This section applies if—
- (a) an employee is absent from work because of sickness or disability, and
  - (b) a qualifying sickness payment is made in respect of the employee’s absence from work.



*Status: Point in time view as at 07/04/2005.*

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- (2) But this section does not apply if the qualifying sickness payment constitutes earnings from the employment by virtue of any other provision.
- (3) The qualifying sickness payment is to be treated as earnings from the employment in respect of the period of absence.
- (4) If the qualifying sickness payment is made from funds to which the employer and the employer's employees have made contributions, only the amount of the payment which it is just and reasonable to attribute to the employer's contributions is treated as earnings under this section.
- (5) In this section "qualifying sickness payment" means a payment which meets conditions A and B.
- (6) Condition A is that the payment is made—
  - (a) to the employee or to a member of the employee's family,
  - (b) to the order of such a person, or
  - (c) to the benefit of such a person.
- (7) Condition B is that the payment is made—
  - (a) by reason of the employment, and
  - (b) as a result of arrangements entered into by the employer.

## **222 Payments by employer on account of tax where deduction not possible**

- (1) This section applies if—
  - (a) an employer is treated by virtue of sections 687, 689 and 693 to 700 as having made a payment of income of an employee ("the notional payment"),
  - (b) the employer is required by virtue of section 710(4) to account to the Inland Revenue for an amount of income tax ("the due amount") in respect of the notional payment, and
  - (c) the employee does not, before the end of the period of [<sup>F51</sup>90 days] beginning with the date on which the employer is treated as making the notional payment, make good the due amount to the employer.
- (2) The due amount is to be treated as earnings from the employment for the tax year in which the date mentioned in subsection (1)(c) falls.
- (3) In this section "employer", in relation to any provision of sections 687, 689, 693 to 700 or 710, means the person taken to be the employer for the purposes of that provision.

It also includes a person who is treated as making a payment of PAYE income by virtue of section 689(2) (payments by person for whom employee works but who is not the employer).

### **Textual Amendments**

**F51** Words in s. 222(1)(c) substituted (with effect in accordance with s. 144(2) of the amending Act) by Finance Act 2003 (c. 14), s. 144(1)

*Status: Point in time view as at 07/04/2005.*

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## **223 Payments on account of director's tax other than by the director**

- (1) This section applies if in a tax year—
  - (a) a person (“P”) makes a payment to another person who is employed as the director of a company,
  - (b) the payment is of, or on account of, earnings from the director’s employment,
  - (c) PAYE regulations require P to deduct an amount of income tax (“the deductible tax”),
  - (d) P deducts none, or only some, of the deductible tax, and
  - (e) either or both of the following occur—
    - (i) P accounts to the Board of Inland Revenue for some or all of the deductible tax (whether or not P has actually deducted the amount accounted for);
    - (ii) one or more persons other than P (apart from the director) account to the Board of Inland Revenue for some or all of the deductible tax.
- (2) For the purposes of this section it does not matter whether the director’s employment is held at the time when P makes the payment mentioned in subsection (1)(a) so long as it is held at some point in the tax year in which the payment is made.
- (3) References in this section to employment as a director accordingly include prospective or past employment as a director.
- (4) The deductible tax accounted for to the Board of Inland Revenue is to be treated as earnings of the director from the director’s employment for the tax year in which it is accounted for.
- (5) But if—
  - (a) the deductible tax is accounted for after the director’s employment has ceased, and
  - (b) the employment ceased in a tax year before the one in which the deductible tax is accounted for,
 the deductible tax is treated as earnings for the tax year in which the director’s employment ceased.
- (6) The following rules apply to the calculation of the amount to be treated as earnings under this section—
  - (a) any amount accounted for after the death of the director is to be disregarded;
  - (b) if P deducts some of the deductible tax, the amount treated as earnings is reduced by the amount deducted;
  - (c) if the director makes good to P or to another person some or all of the deductible tax which P or the other person accounts for, the amount treated as earnings is reduced by the amount made good.
- (7) This section does not apply if the director has no material interest in the company and either—
  - (a) the director is employed as a full-time working director of the company, or
  - (b) the company is—
    - (i) non-profit-making, or
    - (ii) established for charitable purposes only.
- (8) In this section—

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- “director” has the same meaning as in the benefits code (see section 67);
- “director’s employment”, in relation to a person who is employed as a director, means that employment;
- “full-time working director” has the same meaning as in the benefits code (see section 67);
- “material interest” has the same meaning as in the benefits code (see section 68);
- “non-profit-making”, in relation to a company, means that—
- (a) the company does not carry on a trade, and
  - (b) its functions do not consist wholly or mainly in the holding of investments or other property.

## **224 Payments to non-approved personal pension arrangements**

- (1) Contributions paid by an employer under non-approved personal pension arrangements made by the employee are to be treated as earnings from the employment for the tax year in which they are paid.
- (2) Subsection (1) does not apply if or to the extent that the contributions are chargeable to income tax as the employee’s income apart from this section.
- (3) For the purposes of this section—
  - (a) “personal pension arrangements” has the meaning given by section 630(1) of ICTA, and
  - (b) arrangements are “non-approved” if they are not “approved” within the meaning of that section.

## **225 Payments for restrictive undertakings**

- (1) This section applies where—
  - (a) an individual gives a restrictive undertaking in connection with the individual’s current, future or past employment, and
  - (b) a payment is made in respect of—
    - (i) the giving of the undertaking, or
    - (ii) the total or partial fulfilment of the undertaking.
- (2) It does not matter to whom the payment is made.
- (3) The payment is to be treated as earnings from the employment for the tax year in which it is made.
- (4) Subsection (3) does not apply if the payment constitutes earnings from the employment by virtue of any other provision.
- (5) A payment made after the death of the individual who gave the undertaking is treated for the purposes of this section as having been made immediately before the death.
- (6) This section applies only where—
  - (a) the earnings from the employment are general earnings to which any of the provisions mentioned in subsection (7) apply, or
  - (b) if there were general earnings from the employment they would be general earnings to which any of those provisions apply.

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- (7) The provisions are—
- (a) section 15 (earnings of employee resident, ordinarily resident and domiciled in the UK),
  - (b) section 21 (earnings of employee resident and ordinarily resident, but not domiciled, in UK, except chargeable overseas earnings),
  - (c) section 25 (UK-based earnings of employee resident but not ordinarily resident in UK), and
  - (d) section 27 (UK-based earnings of employee not resident in UK).
- (8) In this section “restrictive undertaking” means an undertaking which restricts the individual’s conduct or activities.

For this purpose it does not matter whether or not the undertaking is legally enforceable or is qualified.

## **226 Valuable consideration given for restrictive undertakings**

- (1) In a case where—
- (a) an individual gives a restrictive undertaking in connection with the individual’s current, future or past employment, and
  - (b) valuable consideration that is not in the form of money is provided in respect of—
    - (i) the giving of the undertaking, or
    - (ii) the total or partial fulfilment of the undertaking,
 section 225 applies as it would if a payment of an amount equal to the value of the consideration had been made instead.
- (2) For this purpose—
- (a) merely assuming an obligation to make over or provide valuable property, rights or advantages is not valuable consideration, but
  - (b) wholly or partially discharging such an obligation is.

## **PART 4**

### EMPLOYMENT INCOME: EXEMPTIONS

#### **CHAPTER 1**

##### EXEMPTIONS: GENERAL

## **227 Scope of Part 4**

- (1) This Part contains—
- (a) earnings-only exemptions, and
  - (b) employment income exemptions.
- (2) In this Act “earnings-only exemption” means an exemption from income tax which—

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- (a) prevents liability to tax arising in respect of earnings, either by virtue of one or more particular provisions (such as a Chapter of the benefits code) or at all, and
  - (b) does not prevent liability to tax arising in respect of other employment income.
- (3) In this Act “employment income exemption” means an exemption from income tax which prevents liability to tax arising in respect of employment income of any kind at all.
- (4) The following provisions in Part 7 also confer exemption from liability to income tax in respect of earnings—
- <sup>F52</sup>(a) section 425 (restricted securities: no charge in respect of acquisition in certain circumstances),
  - (b) section 475 (no charge in respect of acquisition of securities option),]
  - (c) sections 489 to 493 and sections 496 to 499 (approved share incentive plans),
  - <sup>F53</sup>(d) .....
  - (e) section 519 (approved SAYE option schemes: no charge in respect of exercise of option),
  - <sup>F54</sup>(f) .....
  - (g) section 524 (approved CSOP schemes: no charge in respect of exercise of option),
  - <sup>F55</sup>(h) .....
  - (i) section 542 (priority share allocations: exemption where offer made to public and employees), and
  - (j) section 544 (priority share allocations: exemption where different offers made to public and employees).

#### Textual Amendments

- F52** S. 227(4)(a)(b) substituted (with effect in accordance with Sch. 22 para. 25(4) of the amending Act, and otherwise 1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 25\(2\)](#); S.I. 2003/1997, art. 2
- F53** S. 227(4)(d) repealed (with effect in accordance with Sch. 22 para. 25(4) of the amending Act, and otherwise 1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 25\(3\)](#), [Sch. 43 Pt. 3\(4\)](#); S.I. 2003/1997, art. 2
- F54** S. 227(4)(f) repealed (with effect in accordance with Sch. 22 para. 25(4) of the amending Act, and otherwise 1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 25\(3\)](#), [Sch. 43 Pt. 3\(4\)](#); S.I. 2003/1997, art. 2
- F55** S. 227(4)(h) repealed (with effect in accordance with Sch. 22 para. 25(4) of the amending Act, and otherwise 1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 25\(3\)](#), [Sch. 43 Pt. 3\(4\)](#); S.I. 2003/1997, art. 2

## 228 Effect of exemptions on liability under provisions outside Part 2

- (1) The exemptions conferred by the provisions specified in subsection (2) prevent liability to income tax arising under any enactment, but the other exemptions in this Part only affect liability to income tax under Part 2 of this Act.
- (2) The provisions referred to in subsection (1) are—
  - (a) section 245 (travelling and subsistence during public transport strikes),

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- (b) section 248 (transport home: late night working and failure of car-sharing arrangements),
- (c) section 264 (annual parties and functions),
- (d) Chapter 8 of this Part (exemptions for special kinds of employees) except for sections 290 and 291,
- (e) section 323 (long service awards),
- (f) section 324 (small gifts from third parties), and
- (g) section 326 (expenses incidental to transfer of a kind not normally met by transferor).

## CHAPTER 2

### EXEMPTIONS: MILEAGE ALLOWANCES AND PASSENGER PAYMENTS

#### *Mileage allowances*

#### **229 Mileage allowance payments**

- (1) No liability to income tax arises in respect of approved mileage allowance payments for a vehicle to which this Chapter applies (see section 235).
- (2) Mileage allowance payments are amounts, other than passenger payments (see section 233), paid to an employee for expenses related to the employee's use of such a vehicle for business travel (see section 236(1)).
- (3) Mileage allowance payments are approved if, or to the extent that, for a tax year, the total amount of all such payments made to the employee for the kind of vehicle in question does not exceed the approved amount for such payments applicable to that kind of vehicle (see section 230).
- (4) Subsection (1) does not apply if—
  - (a) the employee is a passenger in the vehicle, or
  - (b) the vehicle is a company vehicle (see section 236(2)).

#### **230 The approved amount for mileage allowance payments**

- (1) The approved amount for mileage allowance payments that is applicable to a kind of vehicle is—

$$M \times R$$

where—

M is the number of miles of business travel by the employee (other than as a passenger) using that kind of vehicle in the tax year in question;

R is the rate applicable to that kind of vehicle.

- (2) The rates applicable are as follows—

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TABLE

| <i>Kind of vehicle</i> | <i>Rate per mile</i>                             |
|------------------------|--|
| Car or van             | 40p for the first 10,000 miles<br>25p after that |
| Motor cycle            | 24p  |
| Cycle                  | 20p  |

- (3) The reference in subsection (2) to “the first 10,000 miles” is to the total number of miles of business travel in relation to the employment, or any associated employment, by car or van in the tax year in question.
- (4) One employment is associated with another if—
- the employer is the same;
  - the employers are partnerships or bodies and an individual or another partnership or body has control over both of them; or
  - the employers are associated companies within the meaning of section 416 of ICTA.
- (5) In subsection (4)(b)—
- “control”, in relation to a body corporate or partnership, has the meaning given by section 840 of ICTA (in accordance with section 719 of this Act), and
  - the definition of “control” in that section of that Act applies (with the necessary modifications) in relation to an unincorporated association as it applies in relation to a body corporate.
- (6) The Treasury may by regulations amend subsection (2) so as to alter the rates or rate bands.

### **231 Mileage allowance relief**

- (1) An employee is entitled to mileage allowance relief for a tax year—
- if the employee uses a vehicle to which this Chapter applies for business travel, and
  - the total amount of all mileage allowance payments, if any, made to the employee for the kind of vehicle in question for the tax year is less than the approved amount for such payments applicable to that kind of vehicle.
- (2) The amount of mileage allowance relief to which an employee is entitled for a tax year is the difference between—
- the total amount of all mileage allowance payments, if any, made to the employee for the kind of vehicle in question, and
  - the approved amount for such payments applicable to that kind of vehicle.
- (3) Subsection (1) does not apply if—
- the employee is a passenger in the vehicle, or
  - the vehicle is a company vehicle.

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## **232 Giving effect to mileage allowance relief**

- (1) A deduction is allowed for mileage allowance relief to which an employee is entitled for a tax year.
- (2) If any of the employee's earnings—
  - (a) are taxable earnings in the tax year in which the employee receives them, and
  - (b) are not also taxable earnings in that year that fall within subsection (3),
 the relief is allowed as a deduction from those earnings in calculating net taxable earnings in the year.
- (3) If any of the employee's earnings are taxable earnings in the tax year in which the employee remits them to the United Kingdom, there may be deducted from those earnings the amount of any mileage allowance relief—
  - (a) for that tax year, and
  - (b) for any earlier tax year in which the employee was resident in the United Kingdom,
 which, on the assumptions mentioned in subsection (4), would have been deductible under subsection (2).
- (4) The assumptions are—
  - (a) that subsection (2)(b) does not apply, and
  - (b) where applicable, that the earnings constitute taxable earnings in the tax year in which the employee receives them.
- (5) Subsection (3) applies only to the extent that the mileage allowance relief cannot be deducted under subsection (2).
- (6) A deduction shall not be made twice, whether under subsection (2) or (3), in respect of the same mileage allowance relief.
- (7) In this section “taxable earnings” or “net taxable earnings” means taxable earnings or net taxable earnings from the employment for the purposes of Part 2.

### *Passenger payments*

## **233 Passenger payments**

- (1) No liability to income tax arises in respect of approved passenger payments made to an employee for the use of a car or van (whether or not it is a company vehicle) if—
  - (a) the employee receives mileage allowance payments for the use of the car or van, and
  - (b) the cash equivalent of the benefit of the car or van is treated as earnings from the employment by virtue of section 120 or 154 (cars and vans as benefits).

This is subject to subsection (2).

- (2) The condition in subsection (1)(b) needs to be met only if the car or van is made available to the employee by reason of the employment.
- (3) Passenger payments are amounts paid to an employee because, while using a car or van for business travel, the employee carries in it one or more passengers who are also employees for whom the travel is business travel.



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- (4) Passenger payments are approved if, or to the extent that, for a tax year, the total amount of all such payments made to the employee does not exceed the approved amount for such payments (see section 234).
- (5) Section 117 (when cars and vans are made available by reason of employment) applies for the purposes of subsection (2).

### **234 The approved amount for passenger payments**

- (1) The approved amount for passenger payments is—

$$M \times R$$

where—

M is the number of miles of business travel by the employee by car or van—

- (a) for which the employee carries in the tax year in question one or more passengers who are also employees for whom the travel is business travel, and
- (b) in respect of which passenger payments are made;

R is a rate of 5p per mile.

- (2) If the employee carries for all or part of the tax year two or more passengers who are also employees for whom the travel is business travel, the approved amount for passenger payments is the total of the amounts calculated separately under subsection (1) in respect of each of those passengers.
- (3) The Treasury may by regulations amend subsection (1) so as to alter the rate.

### *Supplementary*

### **235 Vehicles to which this Chapter applies**

- (1) This Chapter applies to cars, vans, motor cycles and cycles.
- (2) “Car” means a mechanically propelled road vehicle which is not—
  - (a) a goods vehicle,
  - (b) a motor cycle, or
  - (c) a vehicle of a type not commonly used as a private vehicle and unsuitable to be so used.
- (3) “Van” means a mechanically propelled road vehicle which—
  - (a) is a goods vehicle, and
  - (b) has a design weight not exceeding 3,500 kilograms, and which is not a motor cycle.
- (4) “Motor cycle” has the meaning given by section 185(1) of the Road Traffic Act 1988 (c. 52).
- (5) “Cycle” has the meaning given by section 192(1) of that Act.
- (6) In this section—

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“design weight” means the weight which a vehicle is designed or adapted not to exceed when in normal use and travelling on a road laden;

“goods vehicle” means a vehicle of a construction primarily suited for the conveyance of goods or burden of any description.

## 236 Interpretation of this Chapter

(1) In this Chapter—

“business travel” means travelling the expenses of which, if incurred and paid by the employee in question, would (if this Chapter did not apply) be deductible under sections 337 to 342;

“mileage allowance payments” has the meaning given by section 229(2);

“passenger payments” has the meaning given by section 233(3).

(2) For the purposes of this Chapter a vehicle is a “company vehicle” in a tax year if in that year—

(a) the vehicle is made available to the employee by reason of the employment and is not available for the employee’s private use, or

(b) the cash equivalent of the benefit of the vehicle is to be treated as the employee’s earnings for the tax year by virtue of—

(i) section 120 (benefit of car treated as earnings),

(ii) section 154 (benefit of van treated as earnings), or

(iii) section 203 (residual liability to charge: benefit treated as earnings),  
or

(c) in the case of a car or van, the cash equivalent of the benefit of the car or van would be required to be so treated if sections 167 and 168 (exceptions for pooled cars and vans) [<sup>F56</sup>and section 248A (emergency vehicles)] did not apply, or

(d) in the case of a cycle, the cash equivalent of the benefit of the cycle would be required to be treated as the employee’s earnings for the tax year under Chapter 10 of Part 3 (taxable benefits: residual liability to charge) if section 244(1) (exception for cycles made available) did not apply.

(3) Sections 117 and 118 (when cars and vans are made available by reason of employment and are made available for private use) apply for the purposes of subsection (2).

### Textual Amendments

**F56** Words in s. 236(2)(c) inserted (with effect in accordance with s. 81(3) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 81\(2\)](#)

## CHAPTER 3

### EXEMPTIONS: OTHER TRANSPORT, TRAVEL AND SUBSISTENCE

## 237 Parking provision and expenses

(1) [<sup>F57</sup>No liability to income tax arises] in respect of the provision of workplace parking for an employee.

*Status: Point in time view as at 07/04/2005.*

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- (2) No liability to income tax arises by virtue of the payment or reimbursement of expenses incurred in connection with the provision for or the use by an employee of workplace parking.
- (3) In this section “workplace parking” means—
- (a) a [<sup>F58</sup> parking space for a car or van],
  - (b) a motor cycle parking space, or
  - (c) facilities for parking a cycle other than a motor cycle,
- at or near the employee’s workplace.

#### Textual Amendments

**F57** Words in s. 237(1) substituted (with effect in accordance with s. 16(7) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 16\(2\)](#)

**F58** Words in s. 237(3)(a) substituted (with effect in accordance with s. 80(2) of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 14 para. 8](#)

### 238 Modest private use of heavy goods vehicles

- (1) No liability to income tax arises where a heavy goods vehicle is made available to an employee for the employee’s private use if conditions A and B are met.
- (2) Condition A is that there is no transfer of the property in the vehicle to the employee.
- (3) Condition B is that the employee’s use of the vehicle in the tax year is not wholly or mainly private use.
- (4) In this section—
- “heavy goods vehicle” means a mechanically propelled road vehicle which—
- (a) is of a construction primarily suited for the conveyance of goods or burden of any kind, and
  - (b) is designed or adapted to have a maximum weight exceeding 3,500 kilograms when in normal use and travelling on a road laden, and
- “private use” means use other than for travel which the employee is necessarily obliged to do in the performance of the duties of the employment.

### 239 Payments and benefits connected with taxable cars and vans and exempt heavy goods vehicles

- (1) No liability to income tax arises in respect of the discharge of any liability of an employee in connection with a taxable car or van or an exempt heavy goods vehicle.
- (2) No liability to income tax arises in respect of a payment to an employee in respect of expenses incurred by the employee in connection with a taxable car or van or an exempt heavy goods vehicle.
- (3) Subsections (1) and (2) do not apply to liability arising by virtue of section 149 (benefit of car fuel treated as earnings).

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- (4) No liability to income tax arises by virtue of Chapter 10 of Part 3 (taxable benefits: residual liability to charge) in respect of a benefit connected with a taxable car or van or an exempt heavy goods vehicle.
- (5) Subsection (4) does not apply to the provision of a driver.
- (6) For the purposes of this section a car or van is “taxable” if under Chapter 6 of Part 3 the cash equivalent of the benefit of it is to be treated as the employee’s earnings for the tax year.
- (7) For the purposes of this section—
  - (a) “heavy goods vehicle” has the same meaning as in section 238(4) (modest private use of heavy goods vehicles), and
  - (b) a heavy goods vehicle is “exempt” if it is made available in the tax year to the employee in such circumstances that section 238 applies.
- (8) For the purposes of subsections (1) and (2), a heavy goods vehicle is also “exempt” if it is so made available in such circumstances that section 238 would apply if the employee were not in excluded employment.
- (9) In this Part “excluded employment” means an excluded employment within the meaning of the benefits code (see section 63(4)).

#### **240 Incidental overnight expenses and benefits**

- (1) No liability to income tax arises in respect of a sum if or to the extent that it is paid wholly and exclusively for the purpose of paying or reimbursing expenses which—
  - (a) are incidental to the employee’s absence from the place where the employee normally lives,
  - (b) relate to a continuous period of such absence in relation to which the overnight stay conditions are met (a “qualifying period”), and
  - (c) would not be deductible under Part 5 if the employee incurred and paid them and Chapter 2 of this Part (mileage allowances and passenger payments) did not apply.
- (2) No liability to income tax arises by virtue of Chapter 10 of Part 3 (taxable benefits: residual liability to charge) in respect of a benefit provided for an employee if—
  - (a) its provision is incidental to such an absence during a qualifying period, and
  - (b) no amount would be deductible in respect of it under Part 5.
- (3) Subsections (1) and (2) are subject to section 241 (incidental overnight expenses and benefits: overall exemption limit).
- (4) The overnight stay conditions are that—
  - (a) the employee is obliged to stay away from the place where the employee normally lives throughout the period,
  - (b) the period includes at least one overnight stay away from that place, and
  - (c) each such overnight stay during the period is at a place the expenses of travelling to which meet condition A or B.
- (5) Condition A is that the expenses are deductible under Part 5 (otherwise than under any of the excepted foreign travel provisions) or would be if the employee incurred and paid them and Chapter 2 of this Part did not apply.

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- (6) Condition B is that the expenses are within section 250 or 255 (exemption of work-related and individual learning account training provision) or would be if the employer paid or reimbursed them.
- (7) In this section “excepted foreign travel provisions” means—
  - (a) section 371 (travel costs and expenses where duties performed abroad: visiting spouse’s or child’s travel),
  - (b) section 374 (non-domiciled employee’s spouse’s or child’s travel costs and expenses where duties performed in UK), and
  - (c) section 376 (foreign accommodation and subsistence costs and expenses (overseas employments)).

#### **241 Incidental overnight expenses and benefits: overall exemption limit**

- (1) Section 240(1) and (2) do not apply if the exemption provisions total in respect of the qualifying period in question exceeds the permitted amount.
- (2) In this section “the exemption provisions total”, in respect of a period, means the aggregate of—
  - (a) the amounts that would be exempted under section 240(1) and (2) in respect of the period, apart from this section, and
  - (b) the amounts that would be exempted under section 268 (exemption of vouchers and tokens for incidental overnight expenses) in respect of the period, apart from the condition in section 268(5).
- (3) In this section “the permitted amount”, in respect of a period, means the aggregate of the following amounts—
  - (a) £5 for each night during the period spent wholly in the United Kingdom, and
  - (b) £10 for each night during the period spent wholly or partly outside the United Kingdom.

#### **242 Works transport services**

- (1) No liability to income tax arises in respect of the provision for employees of a works transport service if—
  - (a) the service is available generally to employees of the employer (or each employer) concerned,
  - (b) the main use of the service is for qualifying journeys by those employees, and
  - (c) the service—
    - (i) is used only by the employees for whom it is provided or their children, or
    - (ii) is substantially used only by those employees or children.
- (2) In this section—

“children” includes stepchildren and illegitimate children but does not include children aged 18 or over, and

“works transport service” means a service which is provided by means of a bus or a minibus for conveying employees of one or more employers on qualifying journeys.
- (3) For the purposes of this section—

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- (a) “bus” means a road passenger vehicle which has a seating capacity of 12 or more, and
  - (b) “minibus” means a vehicle constructed or adapted for the carriage of passengers which has a seating capacity of 9, 10 or 11.
- (4) But a vehicle which falls within the definition in subsection (3)(b) is not a minibus for the purposes of this section if—
- (a) it has one or more disqualified seats, and
  - (b) excluding the disqualified seats, it has a seating capacity of 8 or less.
- (5) For the purposes of subsections (3) and (4) the seating capacity of a vehicle is determined in the same way as for the purposes of Part 3 of Schedule 1 to VERA 1994 (vehicle excise duty on buses).

This applies whether or not the vehicle is a bus within the meaning of that Part of that Schedule.

- (6) For the purposes of subsection (4) a seat is disqualified if relevant construction and use requirements are not met in relation to it.

In this subsection “construction and use requirements” has the same meaning as in Part 2 of the Road Traffic Act 1988 (c. 52) or, in Northern Ireland, Part III of the Road Traffic (Northern Ireland) Order 1995 (S.I. 1995/2994 (N.I. 18)).

#### **243 Support for public bus services**

- (1) No liability to income tax arises in respect of the provision of financial or other support for a public transport road service if—
- (a) in the case of a local bus service, conditions A and B are met, or
  - (b) in any other case, conditions A to C are met.
- (2) Condition A is that the service is used by employees of one or more employers for qualifying journeys.
- (3) Condition B is that the service is available generally to employees of the employer (or each employer) concerned.
- (4) Condition C is that the terms on which the service is available to the employees of the employer (or each employer) concerned are not more favourable than those available to other passengers.
- (5) In this section—
- “local bus service” means a local service (as defined in section 2 of the Transport Act 1985 (c. 67)), and
  - “public transport road service” means a public passenger transport service provided by means of a road vehicle.

#### **244 Cycles and cyclist’s safety equipment**

- (1) [<sup>F59</sup>No liability to income tax arises] in respect of the provision for an employee of a cycle or cyclist’s safety equipment if conditions A to C are met.
- (2) Condition A is that there is no transfer of the property in the cycle or equipment in question.

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- (3) Condition B is that the employee uses the cycle or equipment in question mainly for qualifying journeys.
- (4) Condition C is that cycles are available generally to employees of the employer concerned or, as the case may be, cyclist's safety equipment is so available to them.
- (5) In this section "cycle" has the meaning given by section 192(1) of the Road Traffic Act 1988 (c. 52), and "cyclist" has a corresponding meaning.

#### Textual Amendments

- F59** Words in s. 244(1) substituted (with effect in accordance with s. 16(7) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 16\(3\)](#)

### 245 Travelling and subsistence during public transport strikes

- (1) No liability to income tax arises in respect of the following benefits and payments where a strike or other industrial action disrupts a public transport service normally used by an employee.
- (2) They are—
  - (a) the provision for the employee of overnight accommodation at or near the employee's permanent workplace,
  - (b) a payment to the employee in respect of expenses incurred by the employee in connection with such accommodation,
  - (c) the provision for the employee of transport for the purpose of ordinary commuting or travel between any two places that is for practical purposes substantially ordinary commuting, and
  - (d) a payment to the employee in respect of expenses incurred on such transport.

### 246 Transport between work and home for disabled employees: general

- (1) No liability to income tax arises in respect of—
  - (a) the provision of transport for a disabled employee, or
  - (b) the payment or reimbursement of expenses incurred on such transport,
 if the condition in subsection (2) is met.
- (2) The condition is that the transport is provided or the expenses are incurred for the purpose of ordinary commuting or travel between any two places that is for practical purposes substantially ordinary commuting.
- (3) Subsection (1) does not apply in a case where a car is made available to a disabled employee (but see section 247).
- (4) In this section "disabled employee" means an employee who has a physical or mental impairment with a substantial and long-term adverse effect on the employee's ability to carry out normal day to day activities.

### 247 Provision of cars for disabled employees

- (1) This section applies where a car is made available to a disabled employee without any transfer of the property in it.

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- (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 if conditions A to C are met.
- (3) No liability to income tax arises in respect of—
  - (a) the provision of fuel for the car, or
  - (b) the payment or reimbursement of expenses incurred in connection with it, if conditions A to C are met.
- (4) Condition A is that the car has been adapted for the employee’s special needs or, in the case of an employee who because of disability can only drive a car that has automatic transmission, it is such a car.
- (5) Condition B is that the car is made available on terms prohibiting its use otherwise than for—
  - (a) the employee’s business travel, or
  - (b) transport for the employee for the purpose of—
    - (i) ordinary commuting or travel between any two places that is for practical purposes substantially ordinary commuting, or
    - (ii) travel to a place the expenses of travelling to which would be within one of the training exemption provisions if the employer paid them.
- (6) Condition C is that in the tax year the car is only used in accordance with those terms.
- (7) In this section—
 

“business travel” has the same meaning as in Chapter 6 of Part 3 (taxable benefits: cars, vans and related benefits) (see section 171(1)),

“disabled employee” has the same meaning as in section 246 (see subsection (4)), and

“the training exemption provisions” means—

section 250 (exemption of work-related training provision),

section 255 (exemption for contributions to individual learning account training), and

section 311 (retraining courses).
- (8) Section 138(4) (when a car has automatic transmission) applies for the purposes of this section as it applies for the purposes of section 138.

## **248 Transport home: late night working and failure of car-sharing arrangements**

- (1) No liability to income tax arises in respect of the provision of transport or the payment or reimbursement of expenses incurred on transport if—
  - (a) the transport is for a journey from the employee’s workplace to the employee’s home,
  - (b) the late working conditions or the car-sharing failure conditions are met, and
  - (c) the number of previous occasions in the tax year on which the provision of transport within this section or the payment or reimbursement of expenses within this section has occurred is lower than 60.
- (2) The late working conditions are that—



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- (a) the journey is made on an occasion when the employee is required to work later than usual and until at least 9 p.m.,
  - (b) such occasions occur irregularly,
  - (c) by the time when the employee ceases work—
    - (i) public transport has ceased to be available for the journey, or
    - (ii) it would not be reasonable to expect the employee to use it, and
  - (d) the transport is by taxi or similar private road transport.
- (3) The car-sharing failure conditions are that—
- (a) the employee regularly travels to work in a car with one or more other employees of the employee’s employer under arrangements for the sharing of the car with them, and
  - (b) the journey is made on an occasion when the employee is unable to use the car because of unforeseen and exceptional circumstances.

## **[<sup>F60</sup>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)).
- (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—

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- (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.]

#### **Textual Amendments**

**F60** S. 248A inserted (with effect in accordance with s. 81(3) of the amending Act) by [Finance Act 2004](#) (c. 12), s. 81(1)

## **249 Interpretation of this Chapter**

In this Chapter—

“car” and “van” have the same meaning as in Chapter 6 of Part 3 (taxable benefits: cars, vans and related benefits) (see section 115), except that for the purposes of sections 246 and 247 (transport for the disabled) any adaptation of a car for the employee’s special needs is to be disregarded,

“ordinary commuting” has the same meaning as in section 338 (travel for necessary attendance) (see subsection (3)),

“qualifying journey”, in relation to an employee, means the whole or part of a journey—

- (a) between the employee’s home and workplace,
- (b) between one workplace and another,

in connection with the performance of the duties of the employment, and

“workplace” and “permanent workplace” have the meaning given by section 339.

## **CHAPTER 4**

### EXEMPTIONS: EDUCATION AND TRAINING

#### *Work-related training*

## **250 Exemption of work-related training provision**

(1) No liability to income tax arises by virtue of—

- (a) the provision for an employee of work-related training or any benefit incidental to such training, or
- (b) the payment or reimbursement to or in respect of an employee of—
  - (i) the cost of work-related training or of any benefit incidental to such training, or
  - (ii) any costs of a kind specified in subsection (2) in respect of such training.

(2) The costs are—

- (a) costs which are incidental to the employee undertaking the training,

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- (b) expenses incurred in connection with an examination or other assessment of what the employee has gained from the training, and
- (c) the cost of obtaining any qualification, registration or award to which the employee becomes or may become entitled as a result of the training or such an examination or other assessment.

## **251 Meaning of “work-related training”**

- (1) In this Chapter “work-related training”, in relation to an employee, means a training course or other activity designed to impart, instil, improve or reinforce any knowledge, skills or personal qualities which—
  - (a) are likely to prove useful to the employee when performing the duties of the employment or a related employment, or
  - (b) will qualify or better qualify the employee—
    - (i) to perform those duties, or
    - (ii) to participate in any charitable or voluntary activities that are available to be performed in association with the employment or a related employment.
- (2) For this purpose “related employment”, in relation to an employee, means another employment with the same employer, or with a person connected with the employer, which the employee—
  - (a) is to hold,
  - (b) has a serious opportunity of holding, or
  - (c) can realistically expect to have a serious opportunity of holding in due course.

## **252 Exception for non-deductible travel expenses**

- (1) Where travel or subsistence is provided or the costs of travel or subsistence are paid or reimbursed, section 250 does not apply except to the extent that the travel meets condition A or B or the subsistence meets condition B.
- (2) Condition A is that, on the assumptions in subsection (4), mileage allowance relief under Chapter 2 of this Part would be available for the travel if no mileage allowance payments had been made.
- (3) Condition B is that, on those assumptions, the expenses of the travel or subsistence would be deductible under Part 5.
- (4) The assumptions are—
  - (a) that the employee undertook the training as one of the duties of the employment, and
  - (b) that the employee incurred and paid the expenses.
- (5) In this section—
  - “mileage allowance payments” has the meaning given by section 229(2), and
  - “subsistence” includes food, drink and temporary living accommodation.

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### **253 Exception where provision for excluded purposes**

- (1) Section 250 does not apply if or to the extent that the facilities or other benefits that are provided or the costs of which are paid or reimbursed are provided to the employee for one or more of the following purposes.
- (2) They are—
  - (a) enabling the employee to enjoy the facilities or benefits for entertainment or recreational purposes which are unconnected,
  - (b) providing the employee with an unconnected inducement to remain in or accept an employment with the employer or a person connected with the employer, and
  - (c) rewarding the employee for performing duties of the employment or performing them in a particular way.
- (3) In subsection (2)(a) the reference to enjoying facilities or benefits for entertainment or recreational purposes includes a reference to enjoying them in the course of a leisure activity.
- (4) In subsection (2)(a) and (b) “unconnected” means unconnected with imparting, instilling, improving or reinforcing knowledge, skills or personal qualities within section 251(1).

### **254 Exception where unrelated assets are provided**

- (1) Section 250 does not apply if the benefit that is provided or the cost of which is paid or reimbursed is, or is the use of, an asset that is not a training-related asset.
- (2) “Training-related asset”, in relation to work-related training provided to an employee, means—
  - (a) an asset provided for use only—
    - (i) in the course of the training, or
    - (ii) in the course of the training and in the performance of the duties of the employee’s employment,
  - (b) training materials provided in the course of the training, or
  - (c) something made by the employee in the course of the training or incorporated into something so made.
- (3) For this purpose, “training materials” includes stationery, books or other written material, audio or video tapes, compact disks or floppy disks.

#### *Individual learning account training*

### **255 Exemption for contributions to individual learning account training**

- (1) No liability to income tax in respect of income from a current or former employment arises by virtue of—
  - (a) the provision to a person within subsection (2) (“the employee”) of individual learning account training that is given by a person who is not the employee’s employer or former employer,
  - (b) any payment to the person giving the training in respect of the cost of that provision,

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- (c) the provision to the employee of any benefit incidental to such training, or
  - (d) the payment or reimbursement of any costs in respect of such training of a kind specified in subsection (3).
- (2) A person is within this subsection if the person either—
- (a) holds an account that qualifies under section 104 of the Learning and Skills Act 2000 (c. 21), or
  - (b) is a party to arrangements that qualify under section 105 or 106 of that Act or section 2 of the Education and Training (Scotland) Act 2000 (asp. 8).
- (3) The costs are—
- (a) costs which are incidental to the employee undertaking the training,
  - (b) expenses incurred in connection with an examination or other assessment of what the employee has gained from the training, and
  - (c) the cost of obtaining any qualification, registration or award to which the employee becomes or may become entitled as a result of the training or such an examination or other assessment.

## **256 Meaning of “individual learning account training”**

In this Chapter “individual learning account training” means training or education of a kind that qualifies for grants authorised by—

- (a) regulations under section 108 or 109 of the Learning and Skills Act 2000 (c. 21), or
- (b) regulations under section 1 of the Education and Training (Scotland) Act 2000.

## **257 Exception for non-deductible travel expenses**

- (1) Where travel or subsistence is provided or the costs of travel or subsistence are paid or reimbursed, section 255 does not apply except to the extent that the travel meets condition A or B or the subsistence meets condition B.
- (2) Condition A is that, on the assumptions in subsection (4), mileage allowance relief under Chapter 2 of this Part would be available for the travel if no mileage allowance payments had been made.
- (3) Condition B is that, on those assumptions, the expenses of the travel or subsistence would be deductible under Part 5.
- (4) The assumptions are—
  - (a) that the employee undertook the training as one of the duties of the employment, and
  - (b) that the employee incurred and paid the expenses.
- (5) In this section—
  - “mileage allowance payments” has the meaning given by section 229(2), and
  - “subsistence” includes food, drink and temporary living accommodation.

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## **258 Exception where provision for excluded purposes**

- (1) Section 255 does not apply if or to the extent that the facilities or other benefits that are provided or made available, or the costs of which are paid or reimbursed, are provided or made available for either or both of the following purposes.
- (2) They are—
  - (a) enabling the employee or former employee to enjoy the facilities or benefits for entertainment or recreational purposes, and
  - (b) rewarding the employee or former employee for performing duties of the employment or former employment or performing them in a particular way.
- (3) In subsection (2)(a) the reference to enjoying facilities or benefits for entertainment or recreational purposes includes a reference to enjoying them in the course of a leisure activity.

## **259 Exception where unrelated assets are provided**

- (1) Section 255 does not apply if the benefit that is provided, or the use of which is provided, or the cost of which is paid or reimbursed is an asset that is not a training-related asset.
- (2) “Training-related asset”, in relation to individual learning account training provided to an employee or former employee, means—
  - (a) an asset provided—
    - (i) for use only in the course of the training, or
    - (ii) for use in the course of the training and in the performance of the duties of the employee’s employment, but not to any significant extent for any other use, or
  - (b) training materials provided in the course of the training, or
  - (c) something made by the employee or former employee in the course of the training or incorporated into something so made.
- (3) For this purpose “training materials” includes stationery, books or other written material, audio or video tapes, compact disks or floppy disks.

## **260 Exception where training not generally available to staff**

- (1) Section 255(1) only applies if any expenditure involved in making the provision, the payment or the reimbursement is incurred in giving effect to existing arrangements providing—
  - (a) for the person incurring it to contribute to costs arising from the undertaking of individual learning account training by the employer’s employees or former employees, and
  - (b) for such contributions to be generally available, on similar terms, to the employer’s employees at that time.
- (2) In subsection (1) “existing arrangements” means arrangements in place when the agreement to incur the expenditure was made.
- (3) The Treasury may by regulations make provision specifying the persons or other entities under whom Crown servants are to be treated for the purposes of this section as holding employment.

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- (4) Such regulations may—
  - (a) treat a description of Crown servants (or two or more such descriptions taken together) as an entity for the purposes of the regulations, and
  - (b) make different provision for different descriptions of Crown servants.
- (5) In this section “Crown servant” means a person holding an employment under the Crown.

## CHAPTER 5

### EXEMPTIONS: RECREATIONAL BENEFITS

#### *Recreational facilities*

#### **261 Exemption of recreational benefits**

- (1) No liability to income tax arises in respect of the provision to an employee or a member of an employee’s family or household of benefits within subsection (2).
- (2) The benefits are—
  - (a) sporting or other recreational facilities which meet conditions A to C, and
  - (b) a right or opportunity to make use of such facilities.

This is subject to section 262.

- (3) Condition A is that the facilities are available generally to the employees of the employer in question.
- (4) Condition B is that they are not available to members of the public generally.
- (5) Condition C is that they are used wholly or mainly by persons whose right or opportunity to use them is employment-related (whether or not by reference to the same employer).
- (6) A person’s right or opportunity to use facilities is “employment-related” if and only if—
  - (a) it derives from the person being—
    - (i) an employee or former employee, or
    - (ii) a member or former member of the family or household of an employee or former employee,of a particular employer, and
  - (b) the facilities are provided so as to be available generally to that employer’s employees.

#### **262 Benefits not exempted by section 261**

- (1) Section 261 (exemption of recreational benefits) does not apply to the following benefits—
  - (a) an interest in or the use of any of the following—
    - (i) a mechanically propelled vehicle,
    - (ii) holiday or other overnight accommodation, or

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- (iii) facilities which include, or are provided in association with, a right or opportunity to make use of holiday or overnight accommodation,
- (b) facilities provided on domestic premises, or
- (c) a right or opportunity to make use of facilities within paragraph (a) or (b).

(2) In this section—

“domestic premises” means—

- (a) premises used wholly or mainly as a private dwelling, or
- (b) land or other premises belonging to, or enjoyed with, premises so used, and

“vehicle” includes a ship, boat or other vessel, an aircraft and a hovercraft.

### **263 Power to alter benefits to which section 261 applies**

The Treasury may by regulations provide that section 261—

- (a) does not apply to a benefit specified in the regulations,
- (b) applies to a benefit so specified only where such conditions as the regulations specify are met in relation to the terms on which, and the persons to whom, it is provided, or
- (c) applies in such cases as are so specified to—
  - (i) facilities that do not meet the conditions in section 261(3) to (5), or
  - (ii) a benefit within section 262.

#### *Annual parties and functions*

### **264 Annual parties and functions**

- (1) This section applies to an annual party or similar annual function provided for an employer’s employees and available to them generally or available generally to those at a particular location.
- (2) Where in the tax year only one annual party or similar annual function to which this section applies is provided for the employer’s employees, or the employees in question, no liability to income tax arises in respect of its provision if the cost per head of the party or function does not exceed [<sup>F61</sup>£150].
- (3) Where in the tax year two or more such parties or functions are so provided, no liability to income tax arises in respect of the provision of one or more of them (“the exempt party or parties”) if the cost per head of the exempt party or parties does not exceed [<sup>F62</sup>£150] or [<sup>F62</sup>£150] in aggregate.
- (4) For the purposes of this section, the cost per head of a party or function is the total cost of providing—
  - (a) the party or function, and
  - (b) any transport or accommodation incidentally provided for persons attending it (whether or not they are the employer’s employees),
 divided by the number of those persons.
- (5) That total cost includes any value added tax on the expenses incurred in providing the party, function, transport or accommodation.



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### Textual Amendments

- F61** Word in s. 264(2) substituted (13.6.2003) by [The Income Tax \(Exemption of Minor Benefits\) \(Increase in Sums of Money\) Order 2003 \(S.I. 2003/1361\)](#), arts. 1(1), 2
- F62** Word in s. 264(3) substituted (13.6.2003) by [The Income Tax \(Exemption of Minor Benefits\) \(Increase in Sums of Money\) Order 2003 \(S.I. 2003/1361\)](#), arts. 1(1), 2

## Entertainment

### 265 Third party entertainment

- (1) No liability to income tax arises in respect of the provision of entertainment for an employee or a member of the employee's family or household if conditions A to C are met.
- (2) Condition A is that the person providing the entertainment is not the employer or a person connected with the employer.
- (3) Condition B is that neither the employer nor a person connected with the employer has directly or indirectly procured its provision.
- (4) Condition C is that it is not provided—
  - (a) in recognition of particular services performed by the employee in the course of the employment, or
  - (b) in anticipation of particular services to be so performed.
- (5) In this section “entertainment” includes hospitality of any kind.

## CHAPTER 6

### EXEMPTIONS: NON-CASH VOUCHERS AND CREDIT-TOKENS

#### *General exemptions: use for exempt benefits*

### 266 Exemption of non-cash vouchers for exempt benefits

- (1) No liability to income tax arises by virtue of Chapter 4 of Part 3 (taxable benefits: vouchers and credit-tokens) in respect of a non-cash voucher if or to the extent that the voucher is used to obtain anything the direct provision of which would fall within—
  - (a) section 237(1) (parking provision),
  - (b) section 246 (transport between home and work for disabled employees: general),
  - (c) section 247 (provision of cars for disabled employees),
  - (d) section 248 (transport home: late night working and failure of car-sharing arrangements), or
  - (e) section 265 (third party entertainment).
- (2) No liability to income tax arises by virtue of Chapter 4 of Part 3 (taxable benefits: vouchers and credit-tokens) in respect of a non-cash voucher if the voucher evidences

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the employee's entitlement to use anything the direct provision of which would fall within—

- (a) section 242 (works transport services),
  - (b) section 243 (support for public bus services), or
  - (c) section 244 (cycles and cyclist's safety equipment).
- (3) No liability to income tax arises by virtue of Chapter 4 of Part 3 (taxable benefits: vouchers and credit-tokens) in respect of a non-cash voucher if the voucher can only be used to obtain anything the direct provision of which would fall within—
- (a) section 245 (travelling and subsistence during public transport strikes),
  - (b) section 261 (exemption of recreational benefits),
  - (c) section 264 (annual parties and functions),
  - (d) section 296 (armed forces' leave travel facilities), or
  - (e) section 317 (subsidised meals).
- (4) No liability to income tax arises by virtue of Chapter 4 of Part 3 (taxable benefits: vouchers and credit-tokens) in respect of a non-cash voucher if the voucher evidences the employee's entitlement to a benefit in respect of which no charge arises by virtue of Chapter 10 of Part 3 (taxable benefits: residual liability to charge) because of regulations under section 210 (power to exempt minor benefits).
- (5) For the purposes of this section direct provision is taken to fall within a section if it would do so if the employee were not in excluded employment.

## **267 Exemption of credit-tokens used for exempt benefits**

- (1) No liability to income tax arises by virtue of Chapter 4 of Part 3 (taxable benefits: vouchers and credit-tokens) in respect of a credit-token if or to the extent that the token is used to obtain anything the direct provision of which—
- (a) would fall within one of the provisions specified in subsection (2), or
  - (b) would do so if the employee were not in excluded employment.
- (2) Those provisions are—
- (a) section 237(1) (parking provision),
  - (b) section 245 (travelling and subsistence during public transport strikes),
  - (c) section 246 (transport between home and work for disabled employees: general),
  - (d) section 247 (provision of cars for disabled employees),
  - (e) section 248 (transport home: late night working and failure of car-sharing arrangements), and
  - (f) section 265 (third party entertainment).

*Exemptions for particular non-cash vouchers and credit-tokens*

## **268 Exemption of vouchers and tokens for incidental overnight expenses**

- (1) No liability to income tax arises by virtue of Chapter 4 of Part 3 (taxable benefits: vouchers and credit-tokens) in respect of a non-cash voucher or a credit-token if or to the extent that the voucher or token is used by an employee to obtain goods, services or money if conditions A to C are met.

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- (2) In the case of goods or services, condition A is that—
  - (a) obtaining them is incidental to the employee’s absence from the place where the employee normally lives, and
  - (b) that absence is for a continuous period in relation to which the overnight stay conditions are met (“the qualifying period”).
- (3) In the case of money, condition A is that—
  - (a) it is obtained for the purpose of obtaining goods or services, and
  - (b) obtaining them is incidental to such an absence during such a period.
- (4) Condition B is that an amount would not be deductible under section 362 or 363 (deductions where non-cash voucher or credit-token provided) in respect of the cost of obtaining the goods or services.
- (5) Condition C is that the exemption provisions total in respect of the qualifying period does not exceed the permitted amount.
- (6) In this section—
  - “the overnight stay conditions” has the same meaning as in section 240 (exemption of incidental overnight expenses and benefits) (see section 240(4)), and
  - “the exemption provisions total” and “the permitted amount” have the same meaning as in section 241 (incidental overnight expenses and benefits: overall exemption limit) (see section 241(2) and (3)).

## **269 Exemption where benefits or money obtained in connection with taxable car or van or exempt heavy goods vehicle**

- (1) No liability to income tax arises by virtue of Chapter 4 of Part 3 (taxable benefits: vouchers and credit-tokens) in respect of a non-cash voucher or a credit-token if or to the extent that the voucher or token is used by the employee or a member of the employee’s family for obtaining—
  - (a) goods or services in connection with a taxable car or van or an exempt heavy goods vehicle, or
  - (b) money which is spent on such goods or services.
- (2) Subsection (1) applies where the goods in question are fuel for a car, but see section 149(3) (by virtue of which such use of a voucher or token is treated as the provision of the fuel for the purposes of section 149 (benefit of car fuel treated as earnings)).
- (3) For the purposes of this section—
  - (a) “car” and “van” have the meaning given by section 115, and
  - (b) a car or van is “taxable” if the cash equivalent of the benefit of it is treated as the employee’s earnings for the tax year in which the voucher or token is used under Chapter 6 of Part 3 (taxable benefits: cars, vans and related benefits).
- (4) For the purposes of this section—
  - (a) “heavy goods vehicle” has the same meaning as in section 238 (modest private use of heavy goods vehicles), and

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- (b) a heavy goods vehicle is “exempt” if it is made available in the tax year to the employee in such circumstances that section 238 applies or would apply if the employee were not in excluded employment.

## **270 Exemption for small gifts of vouchers and tokens from third parties**

- (1) No liability to income tax arises by virtue of Chapter 4 of Part 3 (taxable benefits: vouchers and credit-tokens) in respect of a non-cash voucher or a credit-token if conditions A to C are met.
- (2) Condition A is that the voucher or token is provided as a gift.
- (3) Condition B is that it is only capable of being used to obtain goods.
- (4) Condition C is that it meets conditions A to C and E in section 324 (general exemption of small gifts from third parties).

### **[<sup>F63</sup>270A] Limited exemption for qualifying childcare vouchers**

- (1) If qualifying childcare vouchers are provided for an [<sup>F64</sup>employee—
  - (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 4 of Part 3 (taxable benefits: vouchers and credit tokens) arises only in respect of so much of the cash equivalent of the benefit as exceeds the exempt amount.]
- (2) A “qualifying childcare voucher” means a non-cash voucher in relation to which Conditions A to C are met.
- (3) Condition A is that the voucher is provided to enable an employee to obtain care for a child who—
  - (a) is a child or stepchild of the employee and is maintained (wholly or partly) at the employee’s expense, or
  - (b) is resident with the employee and is a person in respect of whom the employee has parental responsibility.
- (4) Condition B is that the voucher can only be used to obtain qualifying child care.
- (5) Condition C is that the vouchers are provided under a scheme that is open—
  - (a) to the employer’s employees generally, or
  - (b) generally to those at a particular location.
- (6) For the purposes of this section the “exempt amount”, in any tax year, is [<sup>F65</sup>the sum of—
  - (a) £50 for each qualifying week in that year, and
  - (b) the voucher administration costs for that year.]

[<sup>F66</sup>(6A) The “voucher administration costs” for any tax year in respect of which qualifying childcare vouchers are provided for an employee means the difference between the cost of provision of the vouchers and their face value.

The face value of a voucher is the amount stated on or recorded in the voucher as the value of the provision of care for a child that may be obtained by using it.]

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(7) A “qualifying week” means a tax week in respect of which a qualifying childcare voucher is received.

A “tax week” means one of the successive periods in a tax year beginning with the first day of that year and every seventh day after that (so that the last day of a tax year or, in the case of a tax year ending in a leap year, the last two days is treated as a separate week).

(8) An employee is only entitled to one exempt amount even if care is provided for more than one child.

But it does not matter that another person may also be entitled to an exempt amount in respect of the same child.

(9) An employee is not entitled to an exempt amount under this section and under section 318A (limited exemption for employer-contracted childcare) in respect of the same tax week.

(10) In this section “care”, “child”, “parental responsibility” and “qualifying child care” have the same meaning as in section 318A (see sections 318B and 318C).

[ In this section “ cost of provision”, in relation to a childcare voucher, has the meaning <sup>F67</sup>(10A) given in section 87(3) and (3A).]

(11) The powers conferred by section 318D (childcare: power to vary exempt amount and qualifying conditions) are exercisable—

- (a) in relation to the exempt amount specified in subsection (6) above as in relation to the exempt amount specified in section 318A(6), and
- (b) in relation to the qualifying conditions for the exemption conferred by this section as in relation to the qualifying conditions for the exemption conferred by section 318A.]

#### Textual Amendments

- F63** S. 270A inserted (with effect in accordance with s. 78(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 13 para. 3](#)
- F64** Words in s. 270A(1) substituted (with effect in accordance with s. 16(7) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [s. 16\(4\)](#)
- F65** Words in s. 270A(6) substituted (with effect in accordance with s. 15(5) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [s. 15\(2\)](#)
- F66** S. 270A(6A) inserted (with effect in accordance with s. 15(5) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [s. 15\(3\)](#)
- F67** S. 270A(10A) inserted (with effect in accordance with s. 15(5) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [s. 15\(4\)](#)

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## CHAPTER 7

### EXEMPTIONS: REMOVAL BENEFITS AND EXPENSES

#### *Exemption of removal benefits and expenses: general*

#### **271 Limited exemption of removal benefits and expenses: general**

- (1) No liability to income tax in respect of earnings arises by virtue of—
  - (a) the provision of removal benefits to which this section applies, or
  - (b) the payment or reimbursement of removal expenses to which this section applies.
- (2) Subsection (1) does not apply if (disregarding this section) the earnings are general earnings to which either of the following sections applies—
  - (a) section 22 (chargeable overseas earnings for year when employee resident and ordinarily resident, but not domiciled, in UK), or
  - (b) section 26 (foreign earnings for year when employee resident, but not ordinarily resident, in UK).
- (3) Subsection (1) is subject to section 287 (limit on exemption).

#### **272 Removal benefits and expenses to which section 271 applies**

- (1) Benefits are removal benefits to which section 271 applies if—
  - (a) they are reasonably provided in connection with a change of the employee's residence which meets the conditions in section 273,
  - (b) they are provided on or before the limitation day (see section 274), and
  - (c) they are within subsection (2) or one of the following provisions—
    - (i) section 277 (acquisition benefits and expenses),
    - (ii) section 278 (abortive acquisition benefits and expenses),
    - (iii) section 279 (disposal benefits and expenses),
    - (iv) section 280 (transporting belongings),
    - (v) section 281 (travelling and subsistence),
    - (vi) section 285 (replacement of domestic goods).
- (2) A benefit is within this subsection if it is a non-cash voucher, cash voucher or credit-token used—
  - (a) to obtain goods or services the direct provision of which would be a benefit within one of the provisions specified in subsection (1)(c)(i) to (vi), or
  - (b) to obtain money for the purpose of obtaining such goods or services or meeting expenses within one of those provisions or section 284 (bridging loan expenses).
- (3) Expenses are removal expenses to which section 271 applies if—
  - (a) they are reasonably incurred by the employee in connection with a change of the employee's residence which meets the conditions in section 273,
  - (b) they are incurred on or before the limitation day, and
  - (c) they are within one of the provisions referred to in subsection (1)(c)(i) to (vi) or within section 284 (bridging loan expenses).

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### **273 Conditions applicable to change of residence**

- (1) The conditions referred to in section 272(1)(a) and (3)(a) which apply to the change of the employee's residence are conditions A to C.
- (2) Condition A is that the change of residence results from one of the following changes—
  - (a) the employee becoming employed,
  - (b) an alteration of the duties of the employment, or
  - (c) an alteration of the place where the employee is normally to perform those duties.
- (3) Condition B is that the change of residence is made wholly or mainly to allow the employee to reside within a reasonable daily travelling distance of the place where the employee normally performs or is normally to perform the duties of the employment after the employment change (see section 275).
- (4) Condition C is that the employee's former residence is not within a reasonable daily travelling distance of that place.

### **274 Meaning of “the limitation day”**

- (1) In this Chapter “the limitation day”, in relation to an employee's change of residence, means the last day of the tax year after that in which the employee begins to perform the duties of the employment after the employment change, but this is subject to any direction under subsection (2).
- (2) The Inland Revenue may direct that the last day of a later tax year is the limitation day in relation to any particular change of residence if it appears to them reasonable to do so having regard to all the circumstances of that change.

### **275 Meaning of “the employment change”**

In this Chapter “the employment change”, in relation to an employee's change of residence, means whichever of the changes specified in section 273(2) results in the change of residence.

### **276 Meaning of “residence”, “former residence” and “new residence” etc.**

- (1) If an employee has more than one residence, references in this Chapter to the employee's residence are references to the employee's main residence.
- (2) In this Chapter, in relation to a change of the employee's residence—
  - (a) references to the former residence are references to the employee's residence before the change, and
  - (b) references to the new residence are references to the employee's residence after the change.
- (3) In this Chapter references to an interest in a residence are, in the case of a building, references to an estate or interest in the land concerned.

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### *Benefits and expenses within this Chapter*

#### **277 Acquisition benefits and expenses**

- (1) This section applies if an interest in the employee’s new residence is acquired by—
  - (a) the employee,
  - (b) one or more members of the employee’s family or household, or
  - (c) the employee and one or more members of the employee’s family or household.
  
- (2) The following benefits are within this section—
  - (a) legal services connected with the acquisition of the interest, including legal services connected with any loan raised by the employee to acquire it,
  - (b) the waiving of any procurement fees connected with any such loan,
  - (c) the waiving of any amount payable in respect of insurance effected to cover risks incurred by the maker of any such loan because the loan equals the whole, or a substantial part, of the value of the interest,
  - (d) any survey or inspection of the residence undertaken in connection with the acquisition, and
  - (e) the connection of any utility serving the new residence for use by the employee or by the employee and one or more members of the employee’s family or household.
  
- (3) The following expenses are within this section—
  - (a) sums paid for any services within subsection (2)(a), (d) or (e),
  - (b) any procurement fees connected with any loan raised by the employee to acquire the interest,
  - (c) the costs of any insurance within subsection (2)(c),
  - (d) fees payable to an appropriate registry or appropriate register in connection with the acquisition, and
  - (e) stamp duty [<sup>F68</sup>or stamp duty land tax] charged on the acquisition.
  
- (4) In this section references to a loan raised by the employee include a loan raised by—
  - (a) one or more members of the employee’s family or household, or
  - (b) the employee and one or more members of the employee’s family or household.
  
- (5) In this section—
 

“appropriate registry” means—

  - (a) Her Majesty’s Land Registry,
  - (b) the Land Registry in Northern Ireland, or
  - (c) the Registry of Deeds for Northern Ireland, and

“appropriate register” means any register under the management and control of the Keeper of the Registers of Scotland.

#### **Textual Amendments**

**F68** Words in s. 277(3)(e) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 18 para. 6](#)



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## **278 Abortive acquisition benefits and expenses**

Benefits or expenses are within this section if—

- (a) they are benefits provided or expenses incurred with a view to the acquisition of an interest in a residence,
- (b) the interest is not acquired—
  - (i) because of circumstances outside the control of the person seeking to acquire it, or
  - (ii) because that person reasonably declines to proceed, and
- (c) the benefits or expenses would have fallen within section 277 if the interest had been acquired.

## **279 Disposal benefits and expenses**

- (1) This section applies if the employee has an interest in the former residence and because of the change of residence it is disposed of or is intended to be disposed of.
- (2) The following benefits are within this section—
  - (a) legal services connected with the disposal or intended disposal, including legal services connected with the redemption of a related loan,
  - (b) the waiving of any penalty for redeeming a related loan for the purpose of the disposal or intended disposal,
  - (c) the services of an estate agent or auctioneer engaged in the disposal or intended disposal,
  - (d) services connected with the advertisement of the disposal or intended disposal,
  - (e) the disconnection, for the purpose of the disposal or intended disposal, of any utility serving the former residence, and
  - (f) services connected with maintaining, insuring, or preserving the security of, the former residence at any time when it is unoccupied pending the disposal or intended disposal.
- (3) The following expenses are within this section—
  - (a) sums paid for any services within subsection (2)(a), (c), (d) or (e),
  - (b) any penalty for redeeming a related loan for the purpose of the disposal or intended disposal,
  - (c) rent paid in respect of the former residence at any time when it is unoccupied pending the disposal or intended disposal, and
  - (d) expenses of maintaining, insuring, or preserving the security of the former residence at any time when it is unoccupied pending the disposal or intended disposal.
- (4) In this section references to the employee having an interest in a residence include—
  - (a) one or more members of the employee’s family or household having such an interest, or
  - (b) the employee and one or more members of the employee’s family or household having such an interest.
- (5) A loan is a “related loan” for this purpose if—
  - (a) it was raised to obtain an interest in the former residence, or
  - (b) it is secured on such an interest, or
  - (c) part of it was so raised and the rest of it is so secured.

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## **280 Transporting belongings**

- (1) The following benefits are within this section—
  - (a) the transportation of domestic belongings from the employee’s former residence to the employee’s new residence, and
  - (b) the effecting of insurance to cover such transportation.
- (2) The following expenses are within this section—
  - (a) expenses connected with such transportation, and
  - (b) the costs of any such insurance.
- (3) In this section—
 

“domestic belongings” means belongings of the employee or of members of the employee’s family or household, and

“transportation” includes—

  - (a) packing and unpacking belongings,
  - (b) temporarily storing them, where there is not a direct move from the former to the new residence,
  - (c) detaching domestic fittings from the former residence, where they are to be taken to the new residence, and
  - (d) attaching domestic fittings to the new residence and adapting them, where they are brought from the former residence.

## **281 Travelling and subsistence**

- (1) The following benefits are within this section—
  - (a) subsistence and facilities for travel provided for the employee and members of the employee’s family or household for temporary visits to the new area for purposes connected with the change of residence,
  - (b) any other subsistence provided for the employee,
  - (c) facilities provided for the employee for travel between the employee’s former residence and—
    - (i) the place where the employee’s new duties are normally performed, or
    - (ii) the new place where the duties of the employee’s employment are normally performed, or
    - (iii) temporary living accommodation of the employee,
  - (d) where the employment change is within section 273(2)(b) or (c) (change of duties or place of performance), facilities provided for the employee for travel before the change between the employee’s new residence and—
    - (i) the place where the employee normally performs the duties of the employment before the change, or
    - (ii) temporary living accommodation of the employee,
  - (e) facilities provided for the employee and members of the employee’s family or household for travel from the employee’s former residence to the employee’s new residence in connection with the change of residence,
  - (f) subsistence provided for a relevant child while the child stays in education-linked living accommodation,
  - (g) facilities provided for a relevant child for travel between education-linked living accommodation and the employee’s accommodation.

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- (2) For the purposes of this section, “education-linked living accommodation”, in relation to a relevant child, means living accommodation where the child stays for the purpose of securing continuity in education, being—
- (a) accommodation in the new area where the child stays before the employee’s change of residence,
  - (b) accommodation in the former area where the child stays after that change,
  - (c) accommodation in the new area where the child stays while the employee is living in temporary living accommodation in the former area, or
  - (d) accommodation in the former area where the child stays while the employee is living in temporary living accommodation in the new area.
- (3) For the purposes of subsection (1)(g) “the employee’s accommodation”, in relation to travel to or from education-linked accommodation, means—
- (a) if that accommodation is within subsection (2)(a), the employee’s former residence,
  - (b) if that accommodation is within subsection (2)(b), the employee’s new residence, and
  - (c) if that accommodation is within subsection (2)(c) or (d), the employee’s temporary accommodation.
- (4) The cost of providing subsistence or travel of a kind described in subsection (1) is an expense within this section.
- (5) Subsections (1) and (4) are subject to section 282 (exclusion from this section of benefits and expenses where deduction allowed), and subsection (1) is also subject to section 283 (exclusion from this section of taxable car and van facilities).
- (6) In this section—
- “new duties” means—
    - (a) if the employment change is within section 273(2)(a) (change of employer), the duties of the employee’s new employment, and
    - (b) if the employment change is within section 273(2)(b) (change of duties), the new duties of the employment,
  - “former area” means the area round or near the former residence of the employee,
  - “new area” means—
    - (a) if the employment change is within section 273(2)(a) or (b) (change of employer or duties), the area round or near the place where the employee’s new duties normally are or are to be performed, and
    - (b) if the employment change is within section 273(2)(c) (change of place of performance), the area round or near the new place where the duties of the employee’s employment normally are or are to be performed,
  - “relevant child” means a person who is a member of the employee’s family or household and is aged under 19 at the beginning of the tax year in which the employment change occurs, and
  - “subsistence” means food, drink and temporary living accommodation.

*Status: Point in time view as at 07/04/2005.*

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## **282 Exclusion from section 281 of benefits and expenses where deduction allowed**

- (1) Benefits and expenses are excluded from section 281 (travelling and subsistence) if or to the extent that an amount is deductible in respect of the cost of the benefits or of the expenses under any of the following provisions.
- (2) They are—
  - (a) section 341 (travel at start or finish of overseas employment),
  - (b) section 342 (travel between employments where duties performed abroad), and
  - (c) Chapter 5 of Part 5 except section 376 (deductions for earnings representing benefits or reimbursed expenses in respect of certain foreign travel).
- (3) If an amount is so deductible in respect of part only of the cost of a benefit, the part of the benefit excluded by this section is to be determined on a just and reasonable basis.

## **283 Exclusion from section 281 of taxable car and van facilities**

- (1) A car or van is not treated as a facility for the purposes of section 281(1) if in the tax year in which it is provided it is also made available—
  - (a) to the employee or members of the employee's family or household for private use not falling within section 281(1),
  - (b) by reason of the employee's employment, and
  - (c) without any transfer of the property in it.
- (2) The following sections apply for the purposes of this section as they apply for the purposes of Chapter 6 of Part 3 (taxable benefits: cars, vans and related benefits)—
  - (a) section 115 (meaning of "car" and "van"),
  - (b) section 117 (meaning of car or van made available by reason of employment), and
  - (c) section 118 (availability for private use).

## **284 Bridging loan expenses**

- (1) Expenses are within this section if—
  - (a) the employee has an interest in the former residence and disposes of it because of the change of residence,
  - (b) the employee acquires an interest in the new residence, and
  - (c) the expenses are interest payable by the employee in respect of a loan raised by the employee wholly or partly because expenditure is incurred in connection with that acquisition before the proceeds of that disposal become available.

This is subject to subsections (2) and (3).

- (2) Interest is only within this section if or to the extent that the loan is used—
  - (a) for acquiring the employee's interest in the new residence, or
  - (b) for redeeming a loan—
    - (i) which was raised by the employee to obtain an interest in the former residence,
    - (ii) which is secured on such an interest, or
    - (iii) which was partly so raised and the rest of which is so secured.

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- (3) If the loan exceeds the market value of the employee's interest in the former residence at the time of acquisition of the new residence, the interest on the excess is not within this section.
- (4) If subsection (3) applies in a case where the loan is used partly for purposes within subsection (2) and partly for other purposes, the amount of the interest within this section is the appropriate fraction of the total interest.
- (5) The appropriate fraction is—

$$\frac{MV}{L}$$

or, if it is smaller—

$$\frac{PL}{L}$$

where—

MV is the market value of the employee's interest in the former residence at the time of acquisition of the new residence,

PL is the part of the loan used for purposes within subsection (2), and

L is the amount of the loan.

- (6) In this section—
  - (a) references to a loan raised by the employee include a loan raised by—
    - (i) one or more members of the employee's family or household, or
    - (ii) the employee and one or more members of the employee's family or household, and
  - (b) references to the employee having, disposing of or acquiring an interest in a residence include—
    - (i) one or more members of the employee's family or household having, disposing of or acquiring such an interest, or
    - (ii) the employee and one or more members of the employee's family or household having, disposing of or acquiring such an interest.

## 285 Replacement of domestic goods

- (1) Benefits and expenses are within this section if—
  - (a) the employee has an interest in the former residence and disposes of it because of the change of residence,
  - (b) the employee acquires an interest in the new residence,
  - (c) in the case of benefits, they are domestic goods provided to replace goods used at the former residence which are unsuitable for use at the new residence, and
  - (d) in the case of expenses, they are incurred on the purchase of domestic goods intended for such replacement.
- (2) In this section references to the employee having, disposing of or acquiring an interest in a residence include—

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- (a) one or more members of the employee's family or household having, disposing of or acquiring such an interest, or
- (b) the employee and one or more members of the employee's family or household having, disposing of or acquiring such an interest.

## 286 Power to amend sections [F69 277] to 285

- (1) The Treasury may by regulations amend sections [F69 277] to 285 so as to secure that benefits or expenses which would not otherwise fall within any of those sections do so.
- (2) The regulations may include such supplementary, incidental or consequential provisions as appear to the Treasury to be necessary or expedient.
- (3) Those provisions may be made by amending this Chapter or otherwise.
- (4) The regulations apply to a change of an employee's residence resulting from an employment change occurring on or after the day specified in the regulations for this purpose.

### Textual Amendments

**F69** Words in s. 286 substituted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 17 para. 9\(2\)](#)

### *Limit on exemption*

## 287 Limit on exemption

- (1) If in the case of any change of residence the value of the exemption exceeds £8,000, section 271 (exemption of removal benefits and expenses) does not apply to the excess.
- (2) The value of the exemption is an amount equal to the sum of—
  - (a) the section 62 earnings, and
  - (b) the benefits code earnings (after taking account of section 64(2)(b) where otherwise an amount that falls within paragraph (a) would be included).
- (3) In this section “the section 62 earnings” means all earnings within section 62 (earnings) in respect of which section 271 would prevent liability to income tax from arising if this section were disregarded.
- (4) In this section “the benefits code earnings” means all earnings—
  - (a) which are treated as such under the benefits code (except earnings so treated under Chapter 7 of Part 3 (taxable benefits: loans)), and
  - (b) in respect of which section 271 would prevent liability to income tax from arising if this section were disregarded.
- (5) In the case of living accommodation, the amount that would be so treated is to be taken to be equal to—

### CE- D

where—

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CE is the cash equivalent of the accommodation under Chapter 5 of Part 3 (taxable benefits: living accommodation) for the period in which the accommodation is provided (calculated as mentioned in section 103), and

D is any amount deductible under section 364 (deductions where living accommodation provided).

### *Special exemption and relief for bridging loans*

## **288 Limited exemption of certain bridging loans connected with employment moves**

- (1) No liability to income tax arises by virtue of Chapter 7 of Part 3 (taxable benefits: loans) in respect of a loan if—
  - (a) it is a removal benefit (see subsection (2)),
  - (b) the unused removal benefit exemption condition is met (see subsection (3)), and
  - (c) the loan is discharged before the end of the exempted loan discharge period (see subsection (4)).
- (2) For the purposes of this section and section 289, a loan is a removal benefit if—
  - (a) it is raised by the employee in connection with a change of residence meeting the conditions in section 273 (conditions applicable to change of residence),
  - (b) the employee has an interest in the former residence and disposes of it in consequence of the change of residence,
  - (c) the employee acquires an interest in the new residence,
  - (d) the loan is raised wholly or partly because expenditure is incurred in connection with that acquisition before the proceeds of that disposal become available, and
  - (e) the loan is made before the limitation day.
- (3) For the purposes of this section and section 289 the unused removal benefit exemption condition is that, in the case of the particular change of residence—
  - (a) the sum specified in section 287(1) (limit on exemption), exceeds
  - (b) the amount referred to in section 287(2) (the value of the exemption);and for those purposes that excess is “the unused exemption”.
- (4) In this section and section 289 “the exempted loan discharge period”, in relation to a loan, means the period of N days beginning with the day on which it is made, taking N as the number obtained by applying the following formula and, if that does not give a whole number, rounding up the result to the nearest whole number—

$$\frac{A}{B \times C} \times 365$$

where—

A is the unused exemption,

B is the maximum amount of the loan outstanding in the period beginning with the time when the loan is made and ending with the limitation day, and

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C is the official rate of interest in force when the loan is made (expressed as a percentage).

- (5) In this section—
- (a) references to a loan raised by the employee include a loan raised by—
    - (i) one or more members of the employee’s family or household, or
    - (ii) the employee and one or more members of the employee’s family or household, and
  - (b) references to the employee having, disposing of or acquiring an interest in a residence include—
    - (i) one or more members of the employee’s family or household having, disposing of or acquiring such an interest, or
    - (ii) the employee and one or more members of the employee’s family or household having, disposing of or acquiring such an interest.
- (6) The tax payable in respect of a loan for a tax year ending before the limitation day may be decided on the basis that the unused removal benefit exemption condition will not be met.

## **289 Relief for certain bridging loans not qualifying for exemption under section 288**

- (1) This subsection applies to a loan if—
- (a) it is a removal benefit (see section 288(2)),
  - (b) the unused removal benefit exemption condition is met (see section 288(3)), and
  - (c) the loan is not discharged before the end of the exempted loan discharge period (see section 288(4)).
- (2) A loan to which subsection (1) applies is to be treated for the purposes of Chapter 7 of Part 3 (taxable benefits: loans) as if it was made on the day after the last day of the exempted loan discharge period.
- (3) Subsection (2) does not apply for the purposes of sections 176, 177, 180, 189 and 190.
- (4) The tax payable in respect of a loan for a tax year ending before the limitation day may be decided on the basis that subsections (1) and (2) will not apply because the unused removal benefit exemption condition will not be met.

## **CHAPTER 8**

### EXEMPTIONS: SPECIAL KINDS OF EMPLOYEES

#### *Ministers of religion*

## **290 Accommodation benefits of ministers of religion**

- (1) No liability to income tax in respect of a person employed as a full-time minister arises by virtue of—
- (a) the payment or reimbursement of a statutory amount payable in connection with qualifying premises, or



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- (b) the reimbursement of a statutory deduction made in connection with qualifying premises.
- (2) No liability to income tax in respect of a person employed as a full-time minister arises by virtue of the payment or reimbursement of expenses incurred in connection with providing living accommodation in qualifying premises if the employment is excluded employment.
- (3) Subsection (1) does not apply if or to the extent that the amount or deduction is properly attributable to a part of the premises for which the minister receives rent.
- (4) Premises are qualifying premises in relation to a person employed as a minister if—
  - (a) an interest in them belongs to a charity or an ecclesiastical corporation, and
  - (b) because of that interest and by reason of holding the employment, the minister has a residence in them from which to perform the duties of the employment.
- (5) In this section—
  - “charity” means a body of persons or trust established for charitable purposes only,
  - “full-time minister” means a person in full-time employment as a minister of a religious denomination,
  - “statutory amount” means an amount paid in pursuance of a provision in, or having the force of, an Act, and
  - “statutory deduction” means a deduction made in pursuance of such a provision.

*MPs, government ministers etc.*

## **291 Termination payments to MPs and others ceasing to hold office**

- (1) No liability to income tax in respect of earnings arises by virtue of any grant or payment to which this section applies (but see Chapter 3 of Part 6: payments and benefits on termination of employment etc.).
- (2) This section applies to grants and payments—
  - (a) made in accordance with a resolution of the House of Commons to a person ceasing to be a Member of that House on a dissolution of Parliament,
  - (b) made under section 4 of the Ministerial and other Pensions and Salaries Act 1991 (c. 5) (grants to persons ceasing to hold certain ministerial and other offices),
  - (c) made under section 3 of the European Parliament (Pay and Pensions) Act 1979 (c. 50) (resettlement grants for persons ceasing to be Representatives),
  - (d) made under section 81(3) of the Scotland Act 1998 (c. 46) to a person—
    - (i) ceasing to be a member of the Scottish Parliament on its dissolution, or
    - (ii) ceasing to hold an office corresponding to a relevant office,
  - (e) made under section 18(1) of the Government of Wales Act 1998 (c. 38) to a person ceasing to be a member of the National Assembly for Wales on the expiry of the member’s term of office, or
  - (f) made under section 48(1) of the Northern Ireland Act 1998 (c. 47) to a person—

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- (i) ceasing to be a member of the Northern Ireland Assembly on its dissolution, or
  - (ii) ceasing to hold an office corresponding to a relevant office.
- (3) In this section “a relevant office” has the same meaning as in section 4 of the Ministerial and other Pensions and Salaries Act 1991.

## **292 Overnight expenses allowances of MPs**

- (1) No liability to income tax arises in respect of an overnight expenses allowance paid to a Member of the House of Commons in accordance with a resolution of that House.
- (2) “Overnight expenses allowance” means an allowance expressed to be in respect of additional expenses necessarily incurred by the Member in staying overnight away from the Member’s only or main residence, for the purpose of performing parliamentary duties—
- (a) in the London area, as defined in such a resolution, or
  - (b) in the Member’s constituency.

## **293 Overnight expenses of other elected representatives**

- (1) No liability to income tax arises in respect of a payment to which this section applies if it is expressed to be made in respect of a member’s necessary overnight expenses.
- (2) This section applies to payments—
- (a) made to members of the Scottish Parliament under section 81(2) of the Scotland Act 1998 (c. 46),
  - (b) made to members of the National Assembly for Wales under section 16(2) of the Government of Wales Act 1998 (c. 38), or
  - (c) made to members of the Northern Ireland Assembly under section 47(2) of the Northern Ireland Act 1998 (c. 47).
- (3) In this section “a member’s necessary overnight expenses” means additional expenses necessarily incurred by a member for the purpose of performing duties as a member in staying overnight away from the member’s only or main residence—
- (a) in the area in which the Parliament or Assembly to which the member belongs sits, or
  - (b) in the constituency or region which the member represents.

## **294 [<sup>F70</sup>European] travel expenses of MPs and other representatives**

- (1) No liability to income tax arises in respect of a sum that is—
- (a) paid to a Member of the House of Commons in accordance with a resolution of that House providing for Members of that House to be reimbursed [<sup>F71</sup>European] travel expenses, or
  - (b) paid to a member of—
    - (i) the Scottish Parliament under section 81(2) of the Scotland Act 1998,
    - (ii) the National Assembly for Wales under section 16(2) of the Government of Wales Act 1998, or
    - (iii) the Northern Ireland Assembly under section 47(2) of the Northern Ireland Act 1998,

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and expressed to be made in respect of [<sup>F71</sup>European] travel expenses.

[<sup>F72</sup>(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.]

#### Textual Amendments

**F70** Word in s. 294 heading substituted (with effect in accordance with s. 82(5) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 82\(4\)](#)

**F71** Words in s. 294(1) substituted (with effect in accordance with s. 82(5) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 82\(2\)](#)

**F72** S. 294(2)-(4) substituted (with effect in accordance with s. 82(5) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 82\(3\)](#)

## 295 Transport and subsistence for Government ministers etc.

(1) No liability to income tax arises in respect of the provision of transport or subsistence provided or made available by or on behalf of the Crown to—

- (a) the holder of a ministerial office, or
- (b) a member of the family or household of the holder of a ministerial office.

(2) No liability to income tax arises in respect of payments and reimbursements by or on behalf of the Crown of expenses incurred in connection with the provision of transport or subsistence to a person within subsection (1).

(3) “Ministerial office” means—

- (a) an office in Her Majesty’s Government in the United Kingdom,
- (b) any other office which is one of the offices and positions in respect of which salaries are payable under section 1 of the Ministerial and other Salaries Act 1975 (c. 27), and
- (c) an office under one of the following Acts which corresponds to an office within paragraph (a) or (b)—
  - (i) the Scotland Act 1998 (c. 46),
  - (ii) the Government of Wales Act 1998 (c. 38), or
  - (iii) the Northern Ireland Act 1998 (c. 47).

(4) In determining whether a particular person holds an office within subsection (3)(b), it is irrelevant whether or not a salary is paid or payable to that person under the Ministerial and other Salaries Act 1975.

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- (5) In this section references to the provision of transport to a person include references to—
- (a) the provision or making available to that person of a vehicle with or without a driver,
  - (b) the provision of fuel for a vehicle provided or made available to that person, and
  - (c) the provision of any other benefit in connection with such a vehicle.
- (6) In this section—
- (a) “subsistence” includes food and drink and temporary living accommodation, and
  - (b) “vehicle” means a mechanically propelled road vehicle.

#### *Armed forces*

### **296 Armed forces' leave travel facilities**

- (1) No liability to income tax arises in respect of—
- (a) the provision of travel facilities for a member of the armed forces of the Crown going on or returning from leave, or
  - (b) a payment made in respect of such travel.
- (2) In subsection (1) “travel facilities” does not include a vehicle.

### **297 Armed forces' food, drink and mess allowances**

- (1) No liability to income tax arises in respect of allowances if—
- (a) they are payable out of the public revenue to any description of members of the armed forces of the Crown, and
  - (b) the Treasury certifies that they are payable to them instead of food or drink normally supplied to members of the armed forces.
- (2) No liability to income tax arises in respect of allowances if—
- (a) they are payable out of the public revenue in respect of any description of members of the armed forces of the Crown, and
  - (b) the Treasury certifies that they are so payable as a contribution to the expenses of a mess.

### **298 Reserve and auxiliary forces' training allowances**

No liability to income tax arises in respect of the following sums if they are payable out of the public revenue to members of the reserve and auxiliary forces of the Crown—

- (a) training expenses allowances, and
- (b) bounties payable in consideration of the members undertaking certain training and attaining a particular standard of efficiency.

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### *Crown employees*

#### **299 Crown employees' foreign service allowances**

- (1) No liability to income tax arises in respect of an allowance paid to a person in employment under the Crown if it is certified to represent compensation for the extra cost of being obliged to live outside the United Kingdom in order to perform the duties of the employment.
- (2) A certificate under subsection (1) may only be given by—
  - (a) the Treasury,
  - (b) the Secretary of State,
  - (c) the Lord Chancellor,
  - (d) the Chancellor of the Exchequer,
  - (e) the Minister for the Civil Service,
  - (f) the Lord President of the Council,
  - (g) the Lord Privy Seal, or
  - (h) the Attorney General.

*Consuls, foreign agents etc.*

#### **300 Consuls**

- (1) No liability to income tax arises in respect of income arising from the office of a consul in the United Kingdom in the service of a foreign state.
- (2) Such income is also to be disregarded in estimating the amount of income for any income tax purposes.
- (3) In this section “consul” means a person recognised by Her Majesty as being a consul-general, consul, vice-consul or consular agent.

#### **301 Official agents**

- (1) No liability to income tax arises in respect of income arising from employment as an official agent in the United Kingdom for a foreign state if conditions A and B are met.
- (2) Condition A is that the employee is neither—
  - (a) a Commonwealth citizen, nor
  - (b) a citizen of the Republic of Ireland.
- (3) Condition B is that the functions of the employment are not exercised in connection with a trade, business or other undertaking carried on for the purposes of profit.
- (4) Such income is also to be disregarded in estimating the amount of income for any income tax purposes.
- (5) In this section “official agent” means a person who is not a consul (as defined in section 300) but is employed on the staff of—
  - (a) a consulate, or
  - (b) an official department or agency of a foreign state.

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- (6) Subsection (5)(b) does not apply to a department or agency which carries on a trade, business or other undertaking for the purposes of profit.

### 302 Consular employees

- (1) No liability to income tax arises in respect of income arising from employment in the United Kingdom as a consular employee for a foreign state if—
- (a) Her Majesty by Order in Council directs that this section applies to the foreign state for the purpose of giving effect to a reciprocal arrangement with that state, and
  - (b) condition A or B is met.
- (2) Condition A is that the employee is a national of the foreign state.
- (3) Condition B is that the employee is not a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen.
- (4) In this section—
- “consular employee” includes any person employed for the purposes of the official business of a consular officer at—
- (a) any consulate,
  - (b) any consular establishment, or
  - (c) any other premises used for those purposes, and
- “reciprocal arrangement” means a consular convention or other arrangement with a foreign state, making similar provision to that made by this section [<sup>F73</sup>, sections 646A and 681A of this Act and section 771 of ITTOIA 2005 (relevant foreign income of consular officers and employees)] in the case of Her Majesty’s consular officers or employees in that state.
- (5) An Order in Council under subsection (1) may limit the operation of this section in relation to a state in any way appearing to Her Majesty necessary or expedient having regard to the arrangement with the state.
- (6) Such an Order—
- (a) may be made so as to have effect from a date earlier than that on which it is made, but not earlier than the arrangement in question comes into force, and
  - (b) may contain such transitional provisions as appear to Her Majesty necessary or expedient.
- (7) A statutory instrument containing such an Order is subject to annulment in pursuance of a resolution of the House of Commons.
- (8) This section does not affect section 301 (official agents).

#### Textual Amendments

**F73** Words in s. 302(4) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 591](#) (with [Sch. 2](#))

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### *Visiting forces and staff of designated allied headquarters*

#### **303 Visiting forces and staff of designated allied headquarters**

- (1) No liability to income tax arises in respect of earnings if—
  - (a) they are paid by the government of a designated country to a member of a visiting force of that country or of a civilian component of such a force, and
  - (b) that person is not a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen.
- (2) For the purposes of subsection (1)—
  - (a) members of the armed forces of a designated country who are attached to a designated allied headquarters are treated as a visiting force of that country, and
  - (b) whether a person is a member of a civilian component of such a force is to be determined accordingly.
- (3) No liability to income tax arises in respect of earnings if they are paid by a designated allied headquarters to an employee of a category for the time being agreed between Her Majesty's government in the United Kingdom and the other members of the North Atlantic Council.
- (4) But where the employee is a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen, subsection (3) only applies if it is necessary for it to do so to give effect to an agreement between parties to the North Atlantic Treaty.
- (5) Subsections (1) and (2) are to be interpreted as if—
  - (a) they were in Part 1 of the Visiting Forces Act 1952 (c. 67), and
  - (b) references in that Act to a country to which a provision of that Act applies were references to a designated country.
- (6) In this section—

“allied headquarters” means an international military headquarters established under the North Atlantic Treaty, and

“designated” means designated for the purpose in question by or under an Order in Council made for giving effect to an international agreement.

### *Detached national experts*

#### **304 Experts seconded to European Commission**

- (1) No liability to income tax arises in respect of daily subsistence allowances paid by the European Commission to persons whose services are made available to the Commission by their employers under the detached national experts scheme.
- (2) “The detached national experts scheme” means—
  - (a) the scheme relating to national experts seconded to the European Commission which was established by the Commission on 26th July 1988, as it has effect for the time being, or
  - (b) any scheme having effect for the time being which replaces that scheme.

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### *Offshore oil and gas workers*

#### **305 Offshore oil and gas workers: mainland transfers**

- (1) No liability to income tax arises in respect of—
  - (a) the provision for an employee who has a permanent workplace at an offshore installation of—
    - (i) transfer transport,
    - (ii) related accommodation and subsistence, or
    - (iii) local transport, or
  - (b) the payment or reimbursement of reasonable expenses incurred by such an employee on such transport or accommodation and subsistence.
- (2) Subsection (1)(a)(ii) only applies if the related accommodation and subsistence is provided at reasonable cost.
- (3) In this section “transfer transport” means transport by sea or air between the mainland of Great Britain or Northern Ireland and the offshore installation, which meets conditions A and B.
- (4) Condition A is that the place of arrival or departure on the mainland is one to or from which transport between the mainland and the offshore installation is provided for employees generally.
- (5) Condition B is that the cost of the transport would not be deductible under Part 5 if the employee incurred and paid it.
- (6) In this section—
 

“related accommodation and subsistence” means overnight accommodation and subsistence in the vicinity of the place of departure or arrival on the mainland, which is necessary because of the time at which transfer transport is to be taken,

“local transport” means transport between a place where the employee is provided with related accommodation and subsistence and the place of departure or arrival on the mainland,

.....

“workplace” and “permanent workplace” have the meaning given by section 339.

#### **Textual Amendments**

- F74** Words in s. 305(6) repealed (with effect in accordance with Sch. 27 para. 16 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 27 para. 13](#), [Sch. 42 Pt. 2\(19\)](#)

### *Miners etc.*

#### **306 Miners etc: coal and allowances in lieu of coal**

- (1) No liability to income tax arises in respect of the provision of coal or smokeless fuel or an allowance paid in lieu of such provision if the employee is a colliery worker and the condition in subsection (2) is met.



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- (2) That condition is that the amount of coal or fuel provided or in respect of which the allowance is paid does not substantially exceed the amount reasonably required for personal use.
- (3) That condition is assumed to be met unless the contrary is shown.
- (4) In this section “colliery worker” means a coal miner or any other person employed at or about a colliery otherwise than in clerical, administrative or technical work.

## CHAPTER 9

### EXEMPTIONS: PENSION PROVISION

#### **307 Death or retirement benefit provision**

- (1) No liability to income tax arises by virtue of Chapter 10 of Part 3 (taxable benefits: residual liability to charge) in respect of provision made by an employee’s employer for a retirement or death benefit.
- (2) In subsection (1) “retirement or death benefit” means a pension, annuity, lump sum, gratuity or other similar benefit which will be paid or given to the employee or a member of the employee’s family or household in the event of the employee’s retirement or death.

#### **308 Exemption of contributions to approved personal pension arrangements**

- (1) No liability to income tax arises in respect of earnings where an employer makes contributions under approved personal pension arrangements made by an employee.
- (2) In this section “approved” and “personal pension arrangements” have the meaning given by section 630(1) of ICTA.

## CHAPTER 10

### EXEMPTIONS: TERMINATION OF EMPLOYMENT

#### *Redundancy payments*

#### **309 Limited exemptions for statutory redundancy payments**

- (1) No liability to income tax in respect of earnings arises by virtue of a redundancy payment or an approved contractual payment, except where subsection (2) applies.
- (2) Where an approved contractual payment exceeds the amount which would have been due if a redundancy payment had been payable, the excess is liable to income tax.
- (3) No liability to income tax in respect of employment income other than earnings arises by virtue of a redundancy payment or an approved contractual payment, except where it does so by virtue of Chapter 3 of Part 6 (payments and benefits on termination of employment etc.).

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- (4) For the purposes of this section—
- (a) a statutory payment in respect of a redundancy payment is to be treated as paid on account of the redundancy payment, and
  - (b) a statutory payment in respect of an approved contractual payment is to be treated as paid on account of the approved contractual payment.
- (5) In this section—
- “approved contractual payment” means a payment to a person on the termination of the person’s employment under an agreement in respect of which an order is in force under section 157 of ERA 1996 or Article 192 of ER(NI)O 1996,
- “redundancy payment” means a redundancy payment under Part 11 of ERA 1996 or Part 12 of ER(NI)O 1996, and
- “statutory payment” means a payment under section 167(1) of ERA 1996 or Article 202(1) of ER(NI)O 1996.
- (6) In subsection (5) “employment”, in relation to a person, has the meaning given in section 230(5) of ERA 1996 or Article 3(5) of ER(NI)O 1996.

### *Outplacement benefits*

## **310 Counselling and other outplacement services**

- (1) No liability to income tax arises in respect of—
- (a) the provision of services to a person in connection with the cessation of the person’s employment, or
  - (b) the payment or reimbursement of—
    - (i) fees for such provision, or
    - (ii) travelling expenses incurred in connection with such provision,
 if conditions A to D and, in the case of travel expenses, condition E are met.
- (2) Condition A is that the only or main purpose of the provision of the services is to enable the person to do either or both of the following—
- (a) to adjust to the cessation of the employment, or
  - (b) to find other gainful employment (including self-employment).
- (3) Condition B is that the services consist wholly of any or all of the following—
- (a) giving advice and guidance,
  - (b) imparting or improving skills,
  - (c) providing or making available the use of office equipment or similar facilities.
- (4) Condition C is that the person has been employed <sup>F75</sup>... in the employment which is ceasing throughout the period of 2 years ending—
- (a) at the time when the services begin to be provided, or
  - (b) if earlier, at the time when the employment ceases.
- (5) Condition D is that the opportunity to receive the services, on similar terms as to payment or reimbursement of any expenses incurred in connection with their provision, is available—

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- (a) generally to employees or former employees of the person’s employer in that employment, or
  - (b) to a particular class or classes of them.
- (6) Condition E is that the travel expenses are expenses—
- (a) in respect of which, on the assumptions in subsection (7), mileage allowance relief under Chapter 2 of this Part would be available if no mileage allowance payments had been made, or
  - (b) which, on those assumptions, would be deductible under Part 5.
- (7) The assumptions are—
- (a) that receiving the services is one of the duties of the employee’s employment,
  - (b) that the employee incurs and pays the expenses, and
  - (c) if the employment has in fact ceased, that it continues.
- (8) In this section “mileage allowance payments” has the meaning given by section 229(2).

**Textual Amendments**

**F75** Word in s. 310(4) repealed (with effect in accordance with s. 18(5) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 18\(2\), Sch. 11 Pt. 2\(1\)](#)

**311 Retraining courses**

- (1) No liability to income tax arises in respect of the payment or reimbursement of retraining course expenses by a person (“the employer”) if the course conditions, the employment conditions and, in the case of travel expenses, the conditions in subsection (5) are met.
- (2) In subsection (1) “retraining course expenses” means—
- (a) fees for the attendance of another person (“the employee”) at a training course,
  - (b) travelling expenses incurred in connection with it,
  - (c) fees for an examination taken during or at the end of it, or
  - (d) the cost of any books which are essential for a person attending it.
- (3) The course conditions are that—
- (a) the course provides training designed to impart or improve skills or knowledge relevant to, and intended to be used in the course of, gainful employment (including self-employment) of any description,
  - (b) it is entirely devoted to the teaching or practical application (or both) of the skills or knowledge, <sup>F76</sup>and]
  - (c) it lasts no more than <sup>F77</sup>two years]. <sup>F78</sup>...
  - (d) .....
- (4) The employment conditions are that—
- (a) the employee begins the course while employed by the employer or within the period of one year after the employment ceases,
  - (b) the employee ceases to be employed by the employer before the end of the period of 2 years beginning at the end of the course and is not re-employed by the employer within the period of 2 years after so ceasing,

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- (c) the employee is employed <sup>F79</sup>... in the employment which is ceasing throughout the period of 2 years ending—
    - (i) when the employee begins the course, or
    - (ii) if earlier, when the employment ceases, and
  - (d) the opportunity to undertake the course, on similar terms as to payment or reimbursement of amounts within subsection (1), is available—
    - (i) generally to the employee’s fellow employees or former fellow employees in that employment, or
    - (ii) to a particular class or classes of them.
- (5) The travel expenses must be—
- (a) expenses in respect of which, on the assumptions in subsection (6), mileage allowance relief under Chapter 2 of this Part would be available if no mileage allowance payments had been made, or
  - (b) expenses which, on those assumptions, would be deductible under Part 5.
- (6) The assumptions are—
- (a) that attendance at the course is one of the duties of the employee’s employment,
  - (b) that the employee incurs and pays the expenses, and
  - (c) if the employee has in fact ceased to be employed by the employer, that the employee continues to be employed by the employer.
- (7) In this section “mileage allowance payments” has the meaning given by section 229(2).

#### Textual Amendments

- F76** Word in s. 311(3)(b) inserted (with effect in accordance with s. 18(5) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 18\(3\)\(a\)](#)
- F77** Words in s. 311(3)(c) substituted (with effect in accordance with s. 18(5) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 18\(3\)\(b\)](#)
- F78** S. 311(3)(d) repealed (with effect in accordance with s. 18(5) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 18\(3\)\(c\), Sch. 11 Pt. 2\(1\)](#)
- F79** Word in s. 311(4)(c) repealed (with effect in accordance with s. 18(5) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 18\(4\), Sch. 11 Pt. 2\(1\)](#)

## 312 Recovery of tax

- (1) This section applies if—
- (a) a person’s liability to tax for a tax year has been determined on the assumption that section 311(1) applies, and
  - (b) subsequently—
    - (i) the condition in section 311(4)(a) is not met because of the person’s failure to begin the course within the period of one year after ceasing to be employed, or
    - (ii) the condition in section 311(4)(b) is not met because of the person’s continued employment or re-employment.
- (2) An assessment of an amount or further amount of tax due as a result of the condition not being met may be made under section 29(1) of TMA 1970.

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- (3) Such an assessment must be made before the end of the period of 6 years immediately following the end of the tax year in which subsection (1) first applies.
- (4) If subsection (1)(b)(i) or (ii) applies, the person's employer or former employer must give the Inland Revenue a notice containing particulars of the person's failure to begin the course or continued employment or re-employment within 60 days of coming to know of it.
- (5) If the Inland Revenue have reason to believe that a person has failed to give such a notice, they may by notice require the person to provide such information as they may reasonably require for the purposes of this section about—
  - (a) the failure to begin the course,
  - (b) the continued employment, or
  - (c) the re-employment.
- (6) A notice under subsection (5) may specify a time (not less than 60 days) within which the required information must be provided.

## CHAPTER 11

### MISCELLANEOUS EXEMPTIONS

#### *Living accommodation*

#### **313 Repairs and alterations to living accommodation**

- (1) This section applies where living accommodation is provided by reason of a person's employment.
- (2) No liability to income tax arises by virtue of Chapter 10 of Part 3 (taxable benefits: residual liability to charge) in respect of—
  - (a) alterations and additions to the premises which are of a structural nature, or
  - (b) landlord's repairs to the premises.
- (3) In this section "landlord's repairs" means repairs of a kind which are the obligation of the lessor under the covenants implied by section 11(1) of the Landlord and Tenant Act 1985 (c. 70) (lessor's repairing obligations in short leases) where premises are let under a lease to which that section applies.

#### **314 Council tax etc. paid for certain living accommodation**

- (1) This section applies if living accommodation provided for an employee falls within the exception in one of the following provisions—
  - section 99(1) (accommodation necessary for proper performance of duties),
  - section 99(2) (accommodation provided for better performance of duties), or
  - section 100 (accommodation provided as a result of security threat).
- (2) No liability to income tax arises by virtue of—
  - (a) any payment to, for or on behalf of the employee, or
  - (b) any reimbursement of any payment by the employee,

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in respect of council tax or rates, or water or sewerage charges, in respect of the accommodation.

### **315 Limited exemption for expenses connected with certain living accommodation**

- (1) This section applies if—
  - (a) living accommodation is provided for an employee in a tax year, and
  - (b) conditions A and B are met.
- (2) Condition A is that the accommodation falls within the exception in one of the following provisions—
  - section 99(1) (accommodation necessary for proper performance of duties),
  - section 99(2) (accommodation provided for better performance of duties), or
  - section 100 (accommodation provided as a result of security threat).
- (3) Condition B is that there is an amount of earnings from the employment in the tax year by virtue of expenditure, or the reimbursement to the employee of expenditure, on—
  - (a) heating, lighting or cleaning the premises,
  - (b) repairs to the premises, their maintenance or decoration, or
  - (c) the provision in the premises of furniture, equipment or other items which are normal for domestic occupation.
- (4) If this section applies, no liability to income tax arises in respect of the earnings mentioned in subsection (3) to the extent that they exceed—

$$\left(10\% \times NE \times \frac{DA}{DE}\right) - SMG$$

where—

DA is the number of reckonable days in the tax year (a “reckonable day” being a day on which—

- (a) the accommodation is provided, and
- (b) the employment is held by the employee),

DE is—

- (a) the number of days in that year, or
- (b) if the employment is held for only part of that year, the number of days in that part,

NE is the net amount of the earnings from the employment in the tax year (see subsection (5)),

SMG is, where the expenses are incurred by a person other than the employee, so much of any sum made good by the employee to that other person as is properly attributable to the expenses.

- (5) To calculate the net amount of the earnings from the employment—

#### *Step 1*

Take the earnings from the employment, leaving out of account the expenses in question.

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### *Step 2*

Add, in the case of employment by a company, the earnings from any employment by an associated company.

A company is “associated” with another for this purpose if one has control of the other or both are under the control of the same person.

### *Step 3*

Deduct any deductions allowable under—

- (a) section 232 (giving effect to mileage allowance relief) or Part 5 of this Act,
- (b) section 592(7), 594 or 619(1)(a) of ICTA, or
- (c) section 262 of CAA 2001 (capital allowances to be given effect by treating them as deductions from earnings).

*Work accommodation, supplies etc.*

## **316 Accommodation, supplies and services used in employment duties**

- (1) No liability to income tax arises by virtue of Chapter 10 of Part 3 (taxable benefits: residual liability to charge) in respect of the provision for an employee of accommodation, supplies or services used by the employee in performing duties of the employment if conditions A and B are met.
- (2) Condition A is that any use of the accommodation, supplies or services for private purposes by the employee or members of the employee’s family or household is not significant.
- (3) For this purpose, use “for private purposes” means—
  - (a) use that is not use in performing the duties of the employee’s employment, and
  - (b) use that is at the same time both use in performing the duties of an employee’s employment and other use.
- (4) Condition B is that where the provision is otherwise than on premises occupied by the person making it—
  - (a) its sole purpose is to enable the employee to perform the duties of the employee’s employment, and
  - (b) what is provided is not an excluded benefit.
- (5) The following are excluded benefits unless regulations under subsection (6) provide otherwise—
  - (a) a motor vehicle, boat or aircraft, and
  - (b) a benefit that involves—
    - (i) the extension, conversion or alteration of living accommodation, or
    - (ii) the construction, extension, conversion or alteration of a building or other structure on land adjacent to and enjoyed with such accommodation.
- (6) The Treasury may make provision by regulations as to what is an excluded benefit for the purposes of subsection (4)(b).

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- (7) The regulations may provide that a benefit is an excluded benefit only if such conditions as may be prescribed are met as to the terms on which, and persons to whom, it is provided.

### **[<sup>F80</sup>316A] Homeworker’s additional household expenses**

- (1) This section applies where an employer makes a payment to an employee in respect of reasonable additional household expenses which the employee incurs in carrying out duties of the employment at home under homeworking arrangements.
- (2) No liability to income tax arises in respect of the payment.
- (3) In this section, in relation to an employee—
- “homeworking arrangements” means arrangements between the employee and the employer under which the employee regularly performs some or all of the duties of the employment at home; and
- “household expenses” means expenses connected with the day to day running of the employee’s home.]

#### **Textual Amendments**

**F80** S. 316A inserted (with effect in accordance with s. 137(2) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 137\(1\)](#)

### *Workplace meals*

#### **317 Subsidised meals**

- [<sup>F81</sup>(1) No liability to income tax arises in respect of the provision for an employee by the employer of free or subsidised meals if they are provided—
- (a) in a canteen, or
- (b) on the employer’s business premises,
- and conditions A to C are met.]
- (2) Condition A is that the meals are provided on a reasonable scale.
- (3) Condition B is that all the employer’s employees or all of them at a particular location may obtain one or both of the following—
- (a) a free or subsidised meal, or
- (b) a free or subsidised meal voucher or token.
- (4) Condition C is that if the meals are provided in the restaurant or dining room of a hotel or a catering or similar business at a time when meals are being served to the public—
- (a) part of the restaurant or dining room is designated for the use of employees only, and
- (b) the meals are taken in that part.
- (5) In this section “free or subsidised meal voucher or token” means a voucher, ticket, pass or other document or token which—
- (a) is intended to enable a person to obtain a meal, and



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(b) is provided to the employee free of charge or for less than the cost of the meals to be obtained by it.

(6) In this section “meals” includes light refreshments.

#### Textual Amendments

**F81** S. 317(1) substituted (with effect in accordance with Sch. 17 para. 1(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 17 para. 1(1)**

### Childcare

#### [<sup>F82</sup>318 Childcare: exemption for employer-provided care

(1) [<sup>F83</sup>No liability to income tax arises] in respect of the provision for an employee of care for a child if conditions A to D are met.

For the meaning of “care” and “child”, see section 318B.

(2) If those conditions are met only as respects part of the provision, no such liability arises in respect of that part.

(3) Condition A is that the child—

- (a) is a child or stepchild of the employee and is maintained (wholly or partly) at the employee’s expense,
- (b) is resident with the employee, or
- (c) is a person in respect of whom the employee has parental responsibility.

For the meaning of “parental responsibility”, see section 318B.

(4) Condition B is that—

- (a) the premises on which the care is provided are not used wholly or mainly as a private dwelling, and
- (b) any applicable registration requirement is met.

(5) The registration requirements are—

- (a) in England and Wales, that under Part 10A of the Children Act 1989;
- (b) in Scotland, that under Part 1 or 2 of the Regulation of Care (Scotland) Act 2001;
- (c) in Northern Ireland, that under Part XI of the Children (Northern Ireland) Order 1995.

(6) Condition C is that—

- (a) the premises on which the care is provided are made available by the scheme employer alone, or
- (b) the partnership requirements are met.

In this section “scheme employer” means the employer operating the scheme under which the care is provided (who need not be the employer of the employee).

(7) The partnership requirements are—

- (a) that the care is provided under arrangements made by persons who include the scheme employer,

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- (b) that the premises on which it is provided are made available by one or more of those persons, and
  - (c) that under the arrangements the scheme employer is wholly or partly responsible for financing and managing the provision of the care.
- (8) Condition D is that the care is provided under a scheme that is open—
- (a) to the scheme employer’s employees generally, or
  - (b) generally to those of the scheme employer’s employees at a particular location,
- and that the employee to whom it is provided is either an employee of the scheme employer or is an employee working at the same location as employees of the scheme employer to whom the scheme is open.]

#### Textual Amendments

- F82** Ss. 318-318D substituted for s. 318 (with effect in accordance with s. 78(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 13 para. 1](#)
- F83** Words in s. 318(1) substituted (with effect in accordance with s. 16(7) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [s. 16\(5\)](#)

#### [<sup>F82</sup> 318A Childcare: limited exemption for other care

- (1) If conditions A to C are met in relation to the provision for an employee of care for a [<sup>F84</sup> child—
- (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 of the cash equivalent of the benefit as exceeds the exempt amount.]

For the meaning of “care” and “child”, see section 318B.

- (2) If those conditions are met only as respects part of the provision, subsection (1) applies in respect of that part.
- (3) Condition A is that the child—
- (a) is a child or stepchild of the employee and is maintained (wholly or partly) at the employee’s expense, or
  - (b) is resident with the employee and is a person in respect of whom the employee has parental responsibility.

For the meaning of “parental responsibility”, see section 318B.

- (4) Condition B is that the care is qualifying child care.

For the meaning of “qualifying child care”, see section 318C.

- (5) Condition C is that the care is provided under a scheme that is open—
- (a) to the employer’s employees generally, or
  - (b) generally to those at a particular location.
- (6) For the purposes of this section the “exempt amount”, in any tax year, is £50 for each qualifying week in that year.

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(7) A “qualifying week” means a tax week in which care is provided for a child in circumstances in which conditions A to C are met.

A “tax week” means one of the successive periods in a tax year beginning with the first day of that year and every seventh day after that (so that the last day of a tax year or, in the case of a tax year ending in a leap year, the last two days is treated as a separate week).

(8) An employee is only entitled to one exempt amount even if care is provided for more than one child.

But it does not matter that another person may also be entitled to an exempt amount in respect of the same child.

(9) An employee is not entitled to an exempt amount under this section and under section 270A (limited exemption for childcare vouchers) in respect of the same tax week.]

#### Textual Amendments

**F82** Ss. 318-318D substituted for s. 318 (with effect in accordance with s. 78(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 13 para. 1](#)

**F84** Words in s. 318A(1) substituted (with effect in accordance with s. 16(7) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [s. 16\(6\)](#)

#### [<sup>F82</sup>318B Childcare: meaning of “care”, “child” and “parental responsibility”

(1) For the purposes of sections 318 and 318A (exemptions for employer-provided or employer-contracted childcare) “care” means any form of care or supervised activity that is not provided in the course of the child’s compulsory education.

(2) For the purposes of those sections a person is a “child” until the last day of the week in which falls the 1st September following the child’s fifteenth birthday (or sixteenth birthday if the child is disabled).

(3) For the purposes of subsection (2) a child is disabled if—

(a) a disability living allowance is payable in respect of him, or has ceased to be payable solely because he is a patient,

(b) he—

(i) is registered as blind in a register compiled by a local authority under section 29 of the National Assistance Act 1948 (welfare services),

(ii) has been certified as blind in Scotland and in consequence is registered as blind in a register maintained by or on behalf of a local authority in Scotland, or

(iii) has been certified as blind in Northern Ireland and in consequence is registered as blind in a register maintained by or on behalf of a Health and Social Services Board, or

(c) he ceased to be so registered as blind within the previous 28 weeks.

(4) In subsection (3)(a) “patient” means a person (other than a person who is serving a sentence imposed by a court in a prison or youth custody institution or, in Scotland, a young offenders’ institution) who is regarded as receiving free in-patient treatment

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within the meaning of the Social Security (Hospital In-Patients) Regulations 1975 or the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 1975.

- (5) For the purposes of sections 318 and 318A “parental responsibility” means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and the child’s property.
- (6) In this section and section 318C “local authority” means—
- (a) in relation to England, the council of a county or district, a metropolitan district, a London Borough, the Common Council of the City of London or the Council of the Isles of Scilly;
  - (b) in relation to Wales, the council of a county or county borough;
  - (c) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994.]

#### Textual Amendments

**F82** Ss. 318-318D substituted for s. 318 (with effect in accordance with s. 78(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 13 para. 1](#)

#### [<sup>F82</sup>318C Childcare: meaning of “qualifying child care”

- (1) For the purposes of section 318A “qualifying child care” means registered or approved care within any of subsections (2) to (6) below that is not excluded by subsection (7) below.
- (2) Care provided for a child in England is registered or approved care if it is provided—
- (a) by a person registered under Part 10A of the Children Act 1989,
  - (b) by a school or establishment that does not need to be registered under that Part to provide the care because of an exemption under paragraph 1 or 2 of Schedule 9A to that Act,
  - (c) in the case of care provided for a child out of school hours between the child’s 8th birthday and the last day on which he is treated as being a child, by a school on school premises or by a local authority, or
  - (d) by a child care provider approved by an organisation accredited under the Tax Credit (New Category of Child Care Provider) Regulations 1999,
  - <sup>F85</sup>(e) . . . . .
  - [ <sup>F86</sup>(ea) by a child care provider approved in accordance with the Tax Credits (Approval of Child Care Providers) Scheme 2005, or]
  - (f) by a domiciliary care worker under the Domiciliary Care Agencies Regulations 2002.
- (3) Care provided for a child in Wales is registered or approved care if it is provided—
- (a) by a person registered under Part 10A of the Children Act 1989,
  - (b) by a school or establishment that does not need to be registered under that Part to provide the care because of an exemption under paragraph 1 or 2 of Schedule 9A to that Act,
  - (c) in the case of care provided for a child out of school hours between the child’s 8th birthday and the last day on which he is treated as being a child, by a school on school premises or by a local authority, or

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- (d) by a child care provider approved by an organisation accredited under the Tax Credit (New Category of Child Care Provider) Regulations 1999 <sup>[F87]</sup> or
  - (e) by a domiciliary care worker under the Domiciliary Care Agencies (Wales) Regulations 2004,]
- (4) Care provided for a child in Scotland is registered or approved care if it is provided—
- (a) by a person in circumstances where the care service provided by him—
    - (i) consists of child minding or of day care of children within the meaning of section 2 of the Regulation of Care (Scotland) Act 2001, and
    - (ii) is registered under Part 1 of that Act, or
  - (b) by a local authority in circumstances where the care service provided by the local authority—
    - (i) consists of child minding or of day care of children within the meaning of section 2 of the Regulation of Care (Scotland) Act 2001, and
    - (ii) is registered under Part 2 of that Act.
- (5) Care provided for a child in Northern Ireland is registered or approved care if it is provided—
- (a) by a person registered under Part XI of the Children (Northern Ireland) Order 1995, or
  - (b) by an institution or establishment that does not need to be registered under that Part to provide the care because of an exemption under Article 121 of that Order, or
  - (c) in the case of care provided for a child out of school hours between the child’s 12th birthday and the last day on which he is treated as being a child, by a school on school premises or by an education and library board or an HSS trust.
- (6) Care provided for a child outside the United Kingdom is registered or approved child care if it is provided by a child care provider approved by an organisation accredited under the Tax Credit (New Category of Child Care Provider) Regulations 2002.
- (7) Child care is excluded from section 318A—
- (a) if it is provided by the partner of the employee in question, or
  - (b) if it is provided by a relative of the child wholly or mainly in the child’s home or (if different) the home of a person having parental responsibility for the child<sup>[F88]</sup>, or
  - (c) in the case of care falling within subsection (2)(ea), if—
    - (i) it is provided wholly or mainly in the home of a relative of the child, and
    - (ii) the provider usually provides care there solely in respect of one or more children to whom the provider is a relative.]
- (8) In subsection (7)—
- “partner” means one of a married or unmarried couple; and
  - “relative” means parent, grandparent, aunt, uncle, brother or sister, whether by blood, half blood or marriage.]
- <sup>[F89]</sup>(9) In subsection (7)(c), “relative in relation to a child, also includes—
- (a) a local authority foster parent in relation to the child,

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- (b) a foster parent with whom the child has been placed by a voluntary organisation,
- (c) a person who fosters the child privately (within the meaning of section 66 of the Children Act 1989, or
- (d) a step-parent of the child.]

#### Textual Amendments

- F82** Ss. 318-318D substituted for s. 318 (with effect in accordance with s. 78(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 13 para. 1](#)
- F85** S. 318C(2)(e) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of [The Section 318C Income Tax \(Earnings and Pensions\) Act 2003 \(Amendment\) Regulations 2005 \(S.I. 2005/770\)](#), regs. 1(1), [3\(a\)](#)
- F86** S. 318C(2)(ea) inserted (6.4.2005) by [The Section 318C Income Tax \(Earnings and Pensions\) Act 2003 \(Amendment\) Regulations 2005 \(S.I. 2005/770\)](#), regs. 1(1), [3\(b\)](#)
- F87** S. 318C(3)(e) and preceding word added (6.4.2005) by [The Section 318C Income Tax \(Earnings and Pensions\) Act 2003 \(Amendment\) Regulations 2005 \(S.I. 2005/770\)](#), regs. 1(1), [4](#)
- F88** S. 318C(7)(c) and preceding word added (6.4.2005) by [The Section 318C Income Tax \(Earnings and Pensions\) Act 2003 \(Amendment\) Regulations 2005 \(S.I. 2005/770\)](#), regs. 1(1), [5](#)
- F89** S. 318C(9) inserted (6.4.2005) by [The Section 318C Income Tax \(Earnings and Pensions\) Act 2003 \(Amendment\) Regulations 2005 \(S.I. 2005/770\)](#), regs. 1(1), [6](#)

#### [<sup>F82</sup>318D] **Childcare: power to vary exempt amount and qualifying conditions**

- (1) The Treasury may by order amend section 318A(6) (employer-contracted care: the exempt amount) so as to substitute a different sum of money for that for the time being specified.
- (2) The Treasury may by regulations make such amendments of the provisions of sections 318 to 318C relating to the qualifying conditions for the exemptions conferred by sections 318 and 318A as appear to them appropriate having regard to the corresponding provisions of regulations under section 12 of the Tax Credits Act 2002 relating to entitlement to the child care element of working tax credit.]

#### Textual Amendments

- F82** Ss. 318-318D substituted for s. 318 (with effect in accordance with s. 78(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 13 para. 1](#)

### *Telephones and computer equipment*

#### **319 Mobile telephones**

- (1) No liability to income tax arises by virtue of Chapter 10 of Part 3 (taxable benefits: residual liability to charge) in respect of the provision for an employee or a member of the employee's family or household of a mobile telephone without any transfer of property in it.
- (2) In this section "mobile telephone" means telephone apparatus which—
  - (a) is not physically connected to a land-line, and

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(b) is not a cordless telephone or a telepoint telephone.

(3) For the purposes of subsection (2)—

“cordless telephone” means telephone apparatus designed or adapted to provide a wireless extension to a telephone and used only as such an extension to a telephone which is physically connected to a land-line,

“telephone apparatus” means wireless telegraphy apparatus designed or adapted for the purpose of transmitting and receiving spoken messages and [F90 used in connection with a public electronic communications service], and

“telepoint telephone” means telephone apparatus used for the purpose of a short-range radio communications service at frequencies between 864 and 868 megahertz (inclusive).

#### Textual Amendments

**F90** Words in s. 319(3) substituted (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 17 para. 175\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/1900, arts. 1\(2\), 2\(1\), Sch. 1](#) (with art. 3) (as amended by [S.I. 2003/3142, art. 1\(3\)](#)); [S.I. 2003/3142, art. 3\(2\)](#) (with art. 11)

### 320 Limited exemption for computer equipment

[F91(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 of the aggregate cash equivalent of the benefit in the tax year as exceeds £500.]

(2) Condition A is that the equipment is made available to the employee or to a member of the employee’s family or household without any transfer of property in it.

(3) Condition B is that the arrangements under which computer equipment is made available to employees of the employer, or to members of their families or households, do not favour directors (see subsection (6)).

F92(4) .....

F93(5) .....

(6) The arrangements referred to in condition B are only taken to favour directors if—

- (a) the only such arrangements are arrangements under which the employee is required to be a director of a company, or
- (b) taking all such arrangements together, the terms on which the equipment is made available are more favourable in some or all cases where the employee is a director than in one or more cases where the employee is not.

(7) In this section—

- (a) “computer equipment” includes printers, scanners, modems, discs and other peripheral devices designed to be used by being connected to or inserted in a computer,
- (b) “director” has the meaning given by section 67(1),



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- (c) references to making computer equipment available—
- (i) include references to the provision, together with any computer equipment made available, of a right to use computer software, but
  - (ii) do not include references to the provision of access to, or the use of, <sup>F94</sup>a public electronic communications service.]
- <sup>F95</sup>(d) .....

#### Textual Amendments

- F91** S. 320(1) substituted (with effect in accordance with s. 79(4) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 79\(2\)](#)
- F92** S. 320(4) repealed (with effect in accordance with s. 79(4) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 79\(3\), Sch. 42 Pt. 2\(8\)](#)
- F93** S. 320(5) repealed (with effect in accordance with s. 79(4) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 79\(3\), Sch. 42 Pt. 2\(8\)](#)
- F94** Words in s. 320(7)(c)(ii) substituted (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 17 para. 175\(3\)](#) (with [Sch. 18](#)); [S.I. 2003/1900, arts. 1\(2\), 2\(1\), Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142, art. 1\(3\)](#)); [S.I. 2003/3142, art. 3\(2\)](#) (with [art. 11](#))
- F95** S. 320(7)(d) repealed (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/1900, arts. 1\(2\), 2\(1\), Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142, art. 1\(3\)](#)); [S.I. 2003/3142, art. 3\(2\)](#) (with [art. 11](#))

### *Awards and gifts*

#### 321 Suggestion awards

- (1) This section applies where an employer establishes a scheme for the making of suggestions that is open on the same terms—
  - (a) to employees of the employer generally, or
  - (b) to a particular description of them.
- (2) No liability to income tax arises in respect of an encouragement award or financial benefit award made under the scheme for a suggestion which meets conditions A to C if, or to the extent that, it does not exceed the permitted maximum for the award under section 322.
- (3) Condition A is that the suggestion relates to the activities carried on by the employer.
- (4) Condition B is that the suggestion is made by an employee who could not reasonably be expected to make it in the course of the duties of the employment, having regard to the employee's experience.
- (5) Condition C is that the suggestion is not made at a meeting held for the purpose of proposing suggestions.
- (6) In this section and section 322—
 

“encouragement award” means an award, other than a financial benefit award, made for a suggestion with intrinsic merit or showing special effort, and



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“financial benefit award” means an award for a suggestion relating to an improvement in efficiency or effectiveness which the employer has decided to adopt and reasonably expects will result in a financial benefit.

### **322 Suggestion awards: “the permitted maximum”**

- (1) The permitted maximum for an encouragement award for the purposes of section 321 (suggestion awards) is £25.
- (2) The permitted maximum for a financial benefit award where no such award for the suggestion has been made before is—
  - (a) if only one such award is made for the suggestion, the suggestion maximum, and
  - (b) if two or more such awards are made on the same occasion to different persons for the suggestion, the appropriate proportion of the suggestion maximum.
- (3) If on a later occasion or occasions one or more further such awards are made for the same suggestion, the permitted maximum for each is—
  - (a) if only one such award is made for the suggestion on that occasion, the residue of the suggestion maximum, and
  - (b) if two or more such awards are made on the same occasion to different persons for the suggestion, the appropriate proportion of that residue.
- (4) The suggestion maximum for a financial benefit award is the financial benefit share or £5000 if that is less.
- (5) In subsection (4) “the financial benefit share” means the greater of—
  - (a) half the financial benefit reasonably expected to result from the adoption of the suggestion for the first year after its adoption, and
  - (b) one-tenth of the financial benefit reasonably expected to result from its adoption for the first 5 years after its adoption.
- (6) In this section—
 

“the appropriate proportion” means such proportion as the award bears to the total of the financial benefit awards made on the same occasion for the suggestion,

“the residue of the suggestion maximum” means the suggestion maximum less the total previous exemption, and

“the total previous exemption” means the total of the amounts exempted from income tax under section 321 in respect of financial benefit awards for the suggestion made on previous occasions.

### **323 Long service awards**

- (1) No liability to income tax arises in respect of a long service award which meets the condition in subsection (3) if or to the extent that the chargeable amount does not exceed the permitted maximum.
- (2) In subsection (1)—
 

“chargeable amount” means the amount of employment income which would be charged to tax in respect of the award apart from subsection (1),

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“long service award” means an award made to an employee to mark not less than 20 years' service with the same employer, and  
 “permitted maximum” means [<sup>F96</sup>£50] for each year of service in respect of which the award is made.

- (3) The condition is that the award must take the form of—
- (a) tangible moveable property,
  - (b) shares in a company which is, or belongs to the same group as, the employer, or
  - (c) the provision of any other benefit except—
    - (i) a payment,
    - (ii) a cash voucher,
    - (iii) a credit-token,
    - (iv) securities,
    - (v) shares not within paragraph (b), or
    - (vi) an interest in or rights over securities or shares.
- (4) Subsection (1) does not apply to an award (“the later award”) if another award to mark a particular period of service with the same employer has been made to the employee in the period of 10 years ending with the date on which the later award is made.
- (5) For the purposes of this section, service is treated as being with the same employer if it is with two or more employers—
- (a) each of whom is a successor or predecessor of the others, or
  - (b) one of whom is a company which belongs or has belonged to the same group as the others or a predecessor or successor of the others.
- (6) In this section “group” means a body corporate and its 51% subsidiaries.

#### **Textual Amendments**

**F96** Word in s. 323(2) substituted (13.6.2003) by [The Income Tax \(Exemption of Minor Benefits\) \(Increase in Sums of Money\) Order 2003 \(S.I. 2003/1361\)](#), arts. 1(1), 3

### **324 Small gifts from third parties**

- (1) No liability to income tax arises in respect of a gift provided for an employee or a member of the employee's family or household if conditions A to E are met.
- (2) Condition A is that the gift is not provided by the employer or a person connected with the employer.
- (3) Condition B is that neither the employer nor a person connected with the employer has directly or indirectly procured the gift.
- (4) Condition C is that the gift is not made in recognition of particular services performed by the employee in the course of the employment or in anticipation of such services.
- (5) Condition D is that the gift is not cash or securities or the use of a service.
- (6) Condition E is that the total cost to the donor of all the eligible gifts in respect of the employee in question during the tax year does not exceed [<sup>F97</sup>£250].

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- (7) For the purposes of condition E, the total cost to the donor includes any value added tax payable on the supply of the gifts to the donor, whether or not the donor is entitled to a credit or repayment in respect of that tax.
- (8) In this section “eligible gifts” means all gifts which—
- (a) meet conditions A to D, or
  - (b) are non-cash vouchers or credit-tokens and meet—
    - (i) conditions A to C, and
    - (ii) conditions A and B in section 270 (exemption for small gifts of vouchers and tokens from third parties).
- (9) Subsection (1) does not apply to non-cash vouchers and credit-tokens (but see section 270 which makes provision for a corresponding exemption for them).

#### Textual Amendments

**F97** Word in s. 324(6) substituted (13.6.2003) by [The Income Tax \(Exemption of Minor Benefits\) \(Increase in Sums of Money\) Order 2003 \(S.I. 2003/1361\)](#), arts. 1(1), 4

### *Overseas medical treatment*

#### **325 Overseas medical treatment**

- (1) No liability to income tax arises by virtue of Chapter 10 of Part 3 (taxable benefits: residual liability to charge) in respect of—
- (a) providing an employee with medical treatment outside the United Kingdom where the need for it arises while the employee is outside the United Kingdom for the purpose of performing the duties of the employment, or
  - (b) providing an employee with insurance against the cost of providing such treatment.
- (2) For the purposes of this section—
- (a) “medical treatment” includes all procedures for diagnosing or treating any physical or mental illness, infirmity or defect, and
  - (b) providing a person with medical treatment includes providing for the person to be an in-patient so that such treatment can be given.

#### **[<sup>F98</sup>325A Health and employment insurance payments**

- (1) No liability to income tax in respect of employment income arises on any payment if or to the extent that—
- (a) were the payment an annual payment falling within Chapter 7 of Part 5 of ITTOIA 2005, it would be exempt from income tax under section 735 of that Act (health and employment insurance payments), and
  - (b) it meets conditions A and B.
- (2) Condition A is that the payments are made—
- (a) to a person (“the employee”) who made payments or contributions in respect of premiums under an insurance policy which another person took out wholly or partly for the employee's benefit, or

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- (b) to the employee's husband or wife.
- (3) Condition B is that the payments are attributable on a just and reasonable basis to the payments or contributions in respect of premiums.]

#### **Textual Amendments**

**F98** S. 325A inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 592](#) (with [Sch. 2](#))

*Expenses incidental to sale etc. of asset*

### **326 Expenses incidental to transfer of a kind not normally met by transferor**

- (1) No liability to income tax arises by virtue of the payment or reimbursement of expenses which—
  - (a) are incidental to, and incurred wholly and exclusively as a result of, an employment-related asset transfer, and
  - (b) are of a kind not normally met by the transferor.
- (2) There is an “employment-related asset transfer” if—
  - (a) an asset or the beneficial interest in an asset is transferred to an employee’s employer or a person nominated by the employer, and
  - (b) the right or opportunity to make the transfer arose by reason of the employment.
- (3) In this section references to a transfer are to a sale or any other kind of disposal.

## **PART 5**

EMPLOYMENT INCOME: DEDUCTIONS ALLOWED FROM EARNINGS

### **CHAPTER 1**

DEDUCTIONS ALLOWED FROM EARNINGS: GENERAL RULES

#### *Introduction*

### **327 Deductions from earnings: general**

- (1) This Part provides for deductions that are allowed from the taxable earnings from an employment in a tax year in calculating the net taxable earnings from the employment in the tax year for the purposes of Part 2 (see section 11(1)).
- (2) In this Part, unless otherwise indicated by the context—
  - (a) references to the earnings from which deductions are allowed are references to the taxable earnings mentioned in subsection (1), and
  - (b) references to the tax year are references to the tax year mentioned there.

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- (3) The deductions for which this Part provides are those allowed under—
  - Chapter 2 (deductions for employee’s expenses),
  - Chapter 3 (deductions from benefits code earnings),
  - Chapter 4 (fixed allowances for employee’s expenses),
  - Chapter 5 (deductions for earnings representing benefits or reimbursed expenses),
  - and
  - Chapter 6 (deductions from seafarers' earnings).
- (4) Further provision about deductions from earnings is made in—
  - section 232 (giving effect to mileage allowance relief),
  - section 619 of ICTA (contributions under retirement annuity contracts), and
  - section 262 of CAA 2001 (capital allowances to be given effect by treating them as deductions from earnings).
- (5) Further provision about deductions from income including earnings is made in—
  - Part 12 (payroll giving),
  - section 592(7) of ICTA (contributions to exempt approved schemes), and
  - section 594(1) of ICTA (contributions to exempt statutory schemes).

#### *General rules*

### **328 The income from which deductions may be made**

- (1) The general rule is that deductions under this Part are allowed—
  - (a) from any earnings from the employment in question, and
  - (b) not from earnings from any other employment.

This is subject to subsections (2) to (4).
- (2) Deductions under section 351 (expenses of ministers of religion) are allowed from earnings from any employment as a minister of a religious denomination.
- (3) Deductions under section 368 (fixed sum deductions from earnings payable out of public revenue) are allowed only from earnings payable out of the public revenue.
- (4) Deductions limited to specified earnings (see subsection (5)) are allowed—
  - (a) only from earnings from the employment that are taxable earnings under certain of the charging provisions of Chapters 4 and 5 of Part 2, and
  - (b) not from other earnings from it.
- (5) “Deductions limited to specified earnings” are deductions under—
  - sections 336 to 342 (deductions from earnings charged on receipt: see sections 335(2) and 354),
  - section 353 (deductions from earnings charged on remittance),
  - sections 370 to 374 (travel deductions from earnings charged on receipt), and
  - Chapter 6 of this Part (deductions from seafarers' earnings: see section 378(1)(a)).

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### **329 Deductions from earnings not to exceed earnings**

- (1) The amount of a deduction allowed under this Part may not exceed the earnings from which it is deductible.
- (2) If two or more deductions allowed under this Part are deductible from the same earnings, the amounts deductible may not in aggregate exceed those earnings.
- (3) If deductions allowed otherwise than under this Part fall to be allowed from the same earnings as amounts deductible under this Part, the amounts deductible under this Part may not exceed the earnings remaining after the other deductions.
- (4) Subsections (1) and (2) do not apply to a deduction under section 351 (expenses of ministers of religion), and subsection (3) applies as if such a deduction were allowed otherwise than under this Part.
- (5) This section is to be disregarded for the purposes of the deductibility provisions (see section 332).
- (6) See also section 380 of ICTA (which provides that where a loss in an employment is sustained, relief may be given against other income).

### **330 Prevention of double deductions**

- (1) A deduction from earnings under this Part is not allowed more than once in respect of the same costs or expenses.
- (2) If apart from this subsection—
  - (a) a deduction would be allowed under Chapter 4 of this Part (fixed allowances for employee’s expenses) for a sum fixed by reference to any kind of expenses, and
  - (b) the employee would be entitled under another provision to a deduction for an amount paid in respect of the same kind of expenses,
 only one of those deductions is allowed.

### **331 Order for making deductions**

- (1) This Part needs to be read with section 835(3) and (4) of ICTA (general rule that deductions are to be allowed in the order resulting in the greatest reduction of liability to income tax).
- (2) In the case of deductions under this Part, the general rule in that section is subject to—
  - (a) section 23(3) (which requires certain deductions to be made in order to establish “chargeable overseas earnings”), and
  - (b) section 381 (which requires deductions under other provisions to be taken into account before deductions under Chapter 6 of this Part (seafarers)).

### **332 Meaning of “the deductibility provisions”**

For the purposes of this Part, “the deductibility provisions” means the following provisions (which refer to amounts or expenses that would be deductible if they were incurred and paid by an employee)—

the definition of “business travel” in section 171(1) (definitions for Chapter 6 of Part 3),

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section 179(6) (exception for certain advances for necessary expenses),  
the definition of “business travel” in section 236(1) (definitions for Chapter 2 of Part 4),  
section 240(1)(c) and (5) (exemption of incidental overnight expenses and benefits),  
section 252(3) (exception from exemption of work-related training provision for non-deductible travel expenses),  
section 257(3) (exception from exemption for individual learning account training provision for non-deductible travel expenses),  
section 305(5) (offshore oil and gas workers: mainland transfers),  
section 310(6)(b) (counselling and other outplacement services),  
section 311(5)(b) (retraining courses),  
section 361(b) (scope of Chapter 3 of this Part: cost of benefits deductible as if paid by employee),  
section 362(1)(c) and (2)(b) (deductions where non-cash voucher provided),  
section 363(1)(b) and (2)(b) (deductions where credit-token provided),  
section 364(1)(b) and (2) (deductions where living accommodation provided),  
section 365(1)(b) and (2) (deductions where employment-related benefit provided).

## CHAPTER 2

### DEDUCTIONS FOR EMPLOYEE’S EXPENSES

#### *Introduction*

#### **333 Scope of this Chapter: expenses paid by the employee**

- (1) A deduction from a person’s earnings for an amount is allowed under the following provisions of this Chapter only if the amount—
  - (a) is paid by the person, or
  - (b) is paid on the person’s behalf by someone else and is included in the earnings.
- (2) In the following provisions of this Chapter, in relation to a deduction from a person’s earnings, references to the person paying an amount include references to the amount being paid on the person’s behalf by someone else if or to the extent that the amount is included in the earnings.
- (3) Subsection (1)(b) does not apply to the deductions under—
  - (a) section 351(2) and (3) (expenses of ministers of religion), and
  - (b) section 355 (deductions for corresponding payments by non-domiciled employees with foreign employers),and subsection (2) does not apply in the case of those deductions.
- (4) Chapter 3 of this Part provides for deductions where—
  - (a) a person’s earnings include an amount treated as earnings under Chapter 4, 5 or 10 of Part 3 (taxable benefits: vouchers etc., living accommodation and residual liability to charge), and

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- (b) an amount in respect of the benefit in question would be deductible under this Chapter if the person had incurred and paid it.

### **334 Effect of reimbursement etc.**

- (1) For the purposes of this Chapter, a person may be regarded as paying an amount despite—
  - (a) its reimbursement, or
  - (b) any other payment from another person in respect of the amount.
- (2) But where a reimbursement or such other payment is made in respect of an amount, a deduction for the amount is allowed under the following provisions of this Chapter only if or to the extent that—
  - (a) the reimbursement, or
  - (b) so much of the other payment as relates to the amount,
 is included in the person's earnings.
- (3) This section does not apply to a deduction allowed under section 351 (expenses of ministers of religion).
- (4) This section is to be disregarded for the purposes of the deductibility provisions.

### **335 Application of deductions provisions: “earnings charged on receipt” and “earnings charged on remittance”**

- (1) The availability of certain deductions under this Chapter depends on whether the earnings are earnings charged on receipt or earnings charged on remittance.
- (2) Sections 336 to 342—
  - (a) only apply if the earnings from which the deduction is to be made are earnings charged on receipt, and
  - (b) apply subject to section 354(1) if the earnings from the employment also include other earnings.
- (3) Section 353 (which provides for a deduction for expenses of the kind to which sections 336 to 342 apply)—
  - (a) only applies if the earnings from which the deduction is to be made are earnings charged on remittance, and
  - (b) applies subject to section 354(2) if the earnings from the employment also include other earnings.
- (4) In this Part—
  - “earnings charged on receipt” means earnings which are taxable earnings under section 15, 21, 25 or 27, and
  - “earnings charged on remittance” means earnings which are taxable earnings under section 22 or 26.

*General rule for deduction of employee's expenses*

### **336 Deductions for expenses: the general rule**

- (1) The general rule is that a deduction from earnings is allowed for an amount if—



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- (a) the employee is obliged to incur and pay it as holder of the employment, and
  - (b) the amount is incurred wholly, exclusively and necessarily in the performance of the duties of the employment.
- (2) The following provisions of this Chapter contain additional rules allowing deductions for particular kinds of expenses and rules preventing particular kinds of deductions.
- (3) No deduction is allowed under this section for an amount that is deductible under sections 337 to 342 (travel expenses).

### *Travel expenses*

#### **337 Travel in performance of duties**

- (1) A deduction from earnings is allowed for travel expenses if—
- (a) the employee is obliged to incur and pay them as holder of the employment, and
  - (b) the expenses are necessarily incurred on travelling in the performance of the duties of the employment.
- (2) This section needs to be read with section 359 (disallowance of travel expenses: mileage allowances and reliefs).

#### **338 Travel for necessary attendance**

- (1) A deduction from earnings is allowed for travel expenses if—
- (a) the employee is obliged to incur and pay them as holder of the employment, and
  - (b) the expenses are attributable to the employee’s necessary attendance at any place in the performance of the duties of the employment.
- (2) Subsection (1) does not apply to the expenses of ordinary commuting or travel between any two places that is for practical purposes substantially ordinary commuting.
- (3) In this section “ordinary commuting” means travel between—
- (a) the employee’s home and a permanent workplace, or
  - (b) a place that is not a workplace and a permanent workplace.
- (4) Subsection (1) does not apply to the expenses of private travel or travel between any two places that is for practical purposes substantially private travel.
- (5) In subsection (4) “private travel” means travel between—
- (a) the employee’s home and a place that is not a workplace, or
  - (b) two places neither of which is a workplace.
- (6) This section needs to be read with section 359 (disallowance of travel expenses: mileage allowances and reliefs).

#### **339 Meaning of “workplace” and “permanent workplace”**

- (1) In this Part “workplace”, in relation to an employment, means a place at which the employee’s attendance is necessary in the performance of the duties of the employment.

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- (2) In this Part “permanent workplace”, in relation to an employment, means a place which—
- (a) the employee regularly attends in the performance of the duties of the employment, and
  - (b) is not a temporary workplace.
- This is subject to subsections (4) and (8).
- (3) In subsection (2) “temporary workplace”, in relation to an employment, means a place which the employee attends in the performance of the duties of the employment—
- (a) for the purpose of performing a task of limited duration, or
  - (b) for some other temporary purpose.
- This is subject to subsections (4) and (5).
- (4) A place which the employee regularly attends in the performance of the duties of the employment is treated as a permanent workplace and not a temporary workplace if—
- (a) it forms the base from which those duties are performed, or
  - (b) the tasks to be carried out in the performance of those duties are allocated there.
- (5) A place is not regarded as a temporary workplace if the employee’s attendance is—
- (a) in the course of a period of continuous work at that place—
    - (i) lasting more than 24 months, or
    - (ii) comprising all or almost all of the period for which the employee is likely to hold the employment, or
  - (b) at a time when it is reasonable to assume that it will be in the course of such a period.
- (6) For the purposes of subsection (5), a period is a period of continuous work at a place if over the period the duties of the employment are performed to a significant extent at the place.
- (7) An actual or contemplated modification of the place at which duties are performed is to be disregarded for the purposes of subsections (5) and (6) if it does not, or would not, have any substantial effect on the employee’s journey, or expenses of travelling, to and from the place where they are performed.
- (8) An employee is treated as having a permanent workplace consisting of an area if—
- (a) the duties of the employment are defined by reference to an area (whether or not they also require attendance at places outside it),
  - (b) in the performance of those duties the employee attends different places within the area,
  - (c) none of the places the employee attends in the performance of those duties is a permanent workplace, and
  - (d) the area would be a permanent workplace if subsections (2), (3), (5), (6) and (7) referred to the area where they refer to a place.

### **340 Travel between group employments**

- (1) A deduction from earnings from an employment is allowed for travel expenses if conditions A to D are met.

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- (2) Condition A is that the employee is obliged to incur and pay the expenses.
- (3) Condition B is that the travel is for the purpose of performing duties of the employment at the destination.
- (4) Condition C is that the employee has performed duties of another employment at the place of departure.
- (5) Condition D is that the employments are with companies in the same group.
- (6) In this section “group” means a company and its 51% subsidiaries.
- (7) For the purposes of sections 353 and 354 (special rules for earnings with a foreign element), the expenses are treated as incurred in the performance of the duties to be performed at the destination.
- (8) This section needs to be read with section 359 (disallowance of travel expenses: mileage allowances and reliefs).

### **341 Travel at start or finish of overseas employment**

- (1) A deduction from earnings from an employment is allowed for starting travel expenses and finishing travel expenses if conditions A to C are met.
- (2) Condition A is that the duties of the employment are performed wholly outside the United Kingdom.
- (3) Condition B is that the employee is resident and ordinarily resident in the United Kingdom.
- (4) Condition C is that in a case where the employer is a foreign employer, the employee is domiciled in the United Kingdom.
- (5) If the travel is only partly attributable to the taking up or termination of the employment, this section applies only to the part of the expenses properly so attributable.
- (6) Subsection (7) applies if in the tax year the employment is in substance one whose duties fall to be performed outside the United Kingdom.
- (7) Duties of the employment performed in the United Kingdom, whose performance is merely incidental to the performance of duties outside the United Kingdom, are to be treated for the purposes of subsection (2) as performed outside the United Kingdom.
- (8) In this section—
  - “starting travel expenses” means expenses incurred by the employee in travelling from a place in the United Kingdom to take up the employment,
  - “finishing travel expenses” means expenses incurred by the employee in travelling to a place in the United Kingdom on the termination of the employment, and
  - “employee” includes a person who is to be, or has ceased to be, an employee.
- (9) This section needs to be read with section 359 (disallowance of travel expenses: mileage allowances and reliefs).

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### **342 Travel between employments where duties performed abroad**

- (1) A deduction from earnings from an employment is allowed for travel expenses incurred by the employee if conditions A to F are met.
- (2) Condition A is that the travel is for the purpose of performing duties of the employment at the destination.
- (3) Condition B is that the employee has performed duties of another employment at the place of departure.
- (4) Condition C is that the place of departure or the destination or both are outside the United Kingdom.
- (5) Condition D is that the duties of one or both of the employments are performed wholly or partly outside the United Kingdom.
- (6) Condition E is that the employee is resident and ordinarily resident in the United Kingdom.
- (7) Condition F is that in a case where the employer is a foreign employer, the employee is domiciled in the United Kingdom.
- (8) If the travel is only partly attributable to the purpose of performing duties of the employment at the destination, this section applies only to the part of the expenses properly so attributable.
- (9) This section needs to be read with section 359 (disallowance of travel expenses: mileage allowances and reliefs).

#### *Fees and subscriptions*

### **343 Deduction for professional membership fees**

- (1) A deduction from earnings from an employment is allowed for an amount paid in respect of a professional fee if—
  - (a) the duties of the employment involve the practice of the profession to which the fee relates, and
  - (b) the registration, certification, licensing or other matter in respect of which the fee is payable is a condition, or one of alternative conditions, which must be met if that profession is to be practised in the performance of those duties.
- (2) In this section “professional fee” means a fee mentioned in the following Table.

#### *Table*

##### Health professionals

1. Fee payable for entry or retention of a name in any of the following—
  - (a) the Register of Chartered Psychologists,
  - (b) the register maintained by the Registrar of Chiropractors,
  - (c) a roll or record kept for a class of dental auxiliaries,
  - (d) the dentists register,
  - (e) the register of dispensing opticians,
  - (f) the register maintained by the Health Professions Council,

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- (g) the register maintained by the registrar appointed by the Hearing Aid Council,
- (h) the register of medical practitioners,
- (i) the register maintained by the Nursing and Midwifery Council,
- (j) either of the registers of ophthalmic opticians,
- (k) the register maintained by the Registrar of Osteopaths,
- (l) the Register of Pharmaceutical Chemists.

2. Fee payable by a chartered psychologist on the issue of a practising certificate.

Animal health professionals

3. Fee payable for entry or retention of a name in any of the following—

- (a) the register maintained by the registrar appointed by the Farriers Registration Council,
- (b) the supplementary veterinary register,
- (c) the register of veterinary surgeons.

Legal professionals

4. Fee payable to the Council for Licensed Conveyancers on the issue of a licence to practise as a licensed conveyancer.

5. Fee and contribution to the compensation fund or Guarantee Fund payable on the issue of a solicitor's practising certificate.

Architects

6. Fee payable for entry or retention of a name in the Register of Architects.

Teachers

7. Fee payable for entry or retention of a name in any of the following—

- (a) the register maintained by the General Teaching Council for England,
- (b) the register maintained by the General Teaching Council for Scotland,
- (c) the register maintained by the General Teaching Council for Wales.
- [<sup>F99</sup>(d) the register maintained by the General Teaching Council for Northern Ireland.]

Patent agents and trade mark agents

8. Registration fee payable by—

- (a) a registered patent agent,
- (b) a registered trade mark agent.

9. Practising fee payable by—

- (a) a registered patent agent,
- (b) a registered trade mark agent.

Occupations in the transport sector

10. Fee payable by a driving instructor for entry or retention of a name in the register of approved instructors or on the issue or renewal of a licence authorising its holder to give paid instruction in the driving of a motor car.

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11. Fee (including any related medical or technical examination fee) payable, on the issue or renewal of a licence by the Civil Aviation Authority, by—

- (a) an aircraft maintenance engineer,
- (b) an air traffic controller or student air traffic controller,
- (c) a member of the flight crew of an aircraft registered in the United Kingdom,
- (d) a flight information service officer.

12. Fee (including any related medical examination fee) payable—

- (a) on the issue or renewal of a licence authorising its holder to drive a large goods vehicle or a passenger-carrying vehicle,
- (b) by an officer or other seaman on the issue, renewal or endorsement of a certificate, licence or other document which is required as evidence of his qualification or competence to serve in a ship.

13. Fee payable by a seafarer employed in a sea-going United Kingdom ship on the issue or renewal of a medical fitness certificate.

[<sup>F100</sup>14. Fee payable by a person employed or to be employed at a United Kingdom airport for a criminal records check required for the issue of a security pass authorising him to enter areas within the airport.]

[<sup>F101</sup>Occupations in the private security industry

15. Fee payable on applying for a licence from the Security Industry Authority under the Private Security Industry Act 2001.]

(3) The Board of Inland Revenue may make an order adding such fee as is specified in the order to the Table of fees mentioned in subsection (2).

(4) The Board may make an order if they consider that such fee is payable in respect of any registration, certification, licensing or other matter if it is required as a condition, or one of alternative conditions, of the practice of a profession.

#### **Textual Amendments**

**F99** Words in s. 343(2) added (6.4.2005) by [The Income Tax \(Professional Fees\) Order 2005 \(S.I. 2005/1091\)](#), arts. 1, 2

**F100** Words in s. 343(2) added (1.7.2003) by [The Income Tax \(Professional Fees\) Order 2003 \(S.I. 2003/1652\)](#), arts. 1, 2

**F101** Words in s. 343(2) added (17.5.2004) by [The Income Tax \(Professional Fees\) Order 2004 \(S.I. 2004/1360\)](#), arts. 1, 2

### **344 Deduction for annual subscriptions**

(1) A deduction from earnings from an employment is allowed for an amount paid in respect of an annual subscription if—

- (a) it is paid to a body of persons approved under this section, and
- (b) the activities of the body which are directed to one or more of the objects within subsection (2) are of direct benefit to, or concern the profession practised in, the performance of the duties of the employment.

(2) The objects are—

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- (a) the advancement or dissemination of knowledge (whether generally or among persons belonging to the same or similar professions or occupying the same or similar positions),
  - (b) the maintenance or improvement of standards of conduct and competence among the members of a profession,
  - (c) the provision of indemnity or protection to members of a profession against claims in respect of liabilities incurred by them in the exercise of their profession.
- (3) The Inland Revenue may approve a body of persons under this section if, on an application by the body, they are satisfied that—
- (a) the body is not of a mainly local character,
  - (b) its activities are carried on otherwise than for profit, and
  - (c) its activities are wholly or mainly directed to objects within subsection (2).
- (4) The Inland Revenue must give notice to the body of their decision on the application.
- (5) If the activities of the body are to a significant extent directed to objects other than objects within subsection (2), the Inland Revenue may—
- (a) determine the proportion of the activities directed to objects within subsection (2), and
  - (b) determine that only such corresponding part of the subscription as is specified by the Inland Revenue is allowable under this section.
- (6) In determining that part, the Inland Revenue must have regard to the proportion of expenditure of the body attributable to objects other than objects within subsection (2) and all other relevant circumstances.
- (7) If a body applies for approval under this section and is approved, a subscription paid to it—
- (a) before it has applied but in the same tax year as the application, or
  - (b) after it has applied but before it is approved,
- is treated for the purposes of this section as having been paid to an approved body.

### **345 Decisions of the Inland Revenue under section 344**

- (1) The Inland Revenue may by notice to the body in question—
- (a) withdraw an approval given under section 344, and
  - (b) withdraw or vary a determination made under that section,
- to take account of any change in circumstances.
- (2) A body aggrieved by a decision of the Inland Revenue under section 344 or subsection (1) may appeal to the Special Commissioners.
- (3) The notice of appeal must be given to the Inland Revenue within 30 days after the date on which notice of their decision was given to the body.

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### *Employee liabilities and indemnity insurance*

#### **346 Deduction for employee liabilities**

- (1) A deduction from earnings from an employment is allowed for any or all of the following—
  - A. Payment in or towards the discharge of a liability related to the employment.
  - B. Payment of any costs or expenses incurred in connection with—
    - (a) a claim that the employee is subject to a liability related to the employment, or
    - (b) proceedings relating to or arising out of a claim that the employee is subject to a liability related to the employment.
  - C. Payment of a premium under a qualifying insurance contract, but only to the extent that the premium relates to—
    - (a) provision in the contract for the employee to be indemnified against a payment falling within paragraph A, or
    - (b) provision in the contract for the payment of any costs or expenses falling within paragraph B.
- (2) But a deduction is not allowed for a payment which falls within paragraph A or B if it would be unlawful for the employer to enter into a contract of insurance in respect of the liability, or costs or expenses, in question.
- (3) In this Chapter—
  - (a) “premium”, in relation to a qualifying insurance contract, means an amount payable to the insurer under the contract, and
  - (b) where a qualifying insurance contract relates to more than one person, employment or risk, the part of the premium to be treated as relating to each of them is to be determined by apportionment on a just and reasonable basis.

#### **347 Payments made after leaving the employment**

- (1) A deduction for a payment is not allowed under section 346 if—
  - (a) the employee has ceased to hold the employment, and
  - (b) the payment is made after the day on which the employee ceased to hold the employment.
- (2) If subsection (1) applies, see section 555 (former employee entitled to deduction from total income).

#### **348 Liabilities related to the employment**

For the purposes of this Chapter each of the following kinds of liability is related to the employment— A. Liability imposed upon the employee because he did an act, or failed to do an act—

- (a) in his capacity as holder of the employment, or
- (b) in any other capacity in which he acted in the performance of the duties of the employment.



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B. Liability imposed upon the employee in connection with any proceedings relating to, or arising from, a claim that he is subject to a liability because he did an act, or failed to do an act—

- (a) in his capacity as holder of the employment, or
- (b) in any other capacity in which he acted in the performance of the duties of the employment.

### **349 Meaning of “qualifying insurance contract”**

- (1) In section 346 “qualifying insurance contract” means a contract of insurance which meets conditions A, B, C and D.
- (2) Condition A is that, so far as the risks insured against are concerned, the contract only relates to one or more of the following—
  - (a) the indemnification of an employee against a liability related to the employment,
  - (b) the indemnification of a person against vicarious liability in respect of a liability related to another person’s employment,
  - (c) the payment of costs or expenses incurred—
    - (i) in connection with a claim that a person is subject to a liability to which the insurance relates, or
    - (ii) in connection with any proceedings relating to or arising out of a claim that a person is subject to a liability to which the insurance relates,
  - (d) the indemnification of an employer against loss from a payment made by the employer to an employee in respect of—
    - (i) a liability related to the employment, or
    - (ii) any costs or expenses incurred as mentioned in paragraph (c).
- (3) Condition B is that—
  - (a) the period of insurance under the contract does not exceed 2 years or, if it does, it does so only because of one or more renewals, each for a period of 2 years or less, and
  - (b) the insured is not required to renew the contract for any period.
- (4) Condition C is—
  - (a) that the insured is not entitled under the contract to receive any payment or other benefit in addition to—
    - (i) cover for the risks insured against, and
    - (ii) any right to renew the contract, or
  - (b) if the insured is so entitled, that the part of the premium reasonably attributable to the entitlement is not a significant part of the whole premium.
- (5) Condition D is that the contract is not connected with another contract.

### **350 Connected contracts**

- (1) An insurance contract is connected with another contract for the purposes of section 349 if conditions E and F are met—
  - (a) at the time when both contracts are first in force, or
  - (b) at any time after that time.

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- (2) Condition E is that one of the contracts was entered into—
  - (a) by reference to the other, or
  - (b) with a view to enabling or facilitating entry into the other on particular terms.
- (3) Condition F is that the terms on which one of the contracts was entered into are significantly different from what they would have been if—
  - (a) it had not been entered into in anticipation of the other being entered into, or
  - (b) the other had not also been entered into.
- (4) If—
  - (a) there is only one such significant difference in terms, and
  - (b) the contracts meet conditions A, B and C specified in section 349,
 the difference may be disregarded in the following cases.
- (5) The first case is where the difference is a reduction in premiums under the contract that is reasonably attributable only to the contract—
  - (a) containing a right to renew, or
  - (b) being entered into by way of renewal.
- (6) The second case is where—
  - (a) two or more contracts have been entered into as part of a single transaction, and
  - (b) the difference is reductions in their premiums that are reasonably attributable only to the premium under each of them having been fixed by reference to the appropriate proportion of the combined premium.
- (7) In subsection (6) “the combined premium” means the amount that would have been the total premium under a single contract relating to all the risks covered by the contracts.

### *Expenses of ministers of religion*

#### **351 Expenses of ministers of religion**

- (1) A deduction is allowed from any earnings from any employment as a minister of a religious denomination for amounts incurred by the minister wholly, exclusively and necessarily in the performance of duties of such an employment.
- (2) If a minister of a religious denomination pays rent in respect of a dwelling-house, part of which is used mainly and substantially for the purposes of such duties, a deduction is allowed from the minister's earnings from any employment as such a minister for—
  - (a) one quarter of the rent, or
  - (b) if less, the part of the rent that, on a just and reasonable apportionment, is attributable to that part of the dwelling-house.
- (3) If—
  - (a) an interest in premises belongs to a charity or an ecclesiastical corporation, and
  - (b) because of that interest and by reason of holding an employment as a minister of a religious denomination, the minister has a residence in the premises from which to perform the duties of the employment,

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a deduction is allowed from the minister’s earnings from any such employment for part of any expenses borne by the minister on the maintenance, repair, insurance or management of the premises.

(4) The amount of the deduction is—

$$\frac{A}{4} - B$$

where—

A is the amount of the expenses borne by the minister on the maintenance, repair, insurance or management of the premises, and

B is the amount of those expenses that are allowed under subsection (1).

(5) In this section “charity” means a body of persons or trust established for charitable purposes only.

(6) Subsection (1) needs to be read with section 359 (disallowance of travel expenses: mileage allowances and reliefs).

#### *Agency fees paid by entertainers*

### **352 Limited deduction for agency fees paid by entertainers**

(1) A deduction is allowed from earnings from an employment as an entertainer for agency fees (and any value added tax on them) if the fees are calculated as a percentage of the whole or part of the earnings from the employment.

This is subject to the limit in subsection (2).

(2) Amounts may be deducted under this section in calculating the net taxable earnings from an employment in a tax year only to the extent that, in aggregate, they do not exceed 17.5% of the taxable earnings from the employment in the tax year.

(3) Subsections (4) and (5) apply for the purposes of this section.

(4) “Entertainer” means an actor, dancer, musician, singer or theatrical artist.

(5) “Agency fees”, in relation to an employment, means—

(a) fees paid under a contract between the employee and another person, to whom the fees are paid, who—

(i) agrees under the contract to act as an agent of the employee in connection with the employment, and

(ii) at the time the fees are paid is carrying on an employment agency with a view to profit, and

(b) fees paid under an arrangement under which a co-operative society or the members of such a society agree to act as the employee’s agent in connection with the employment.

(6) For the purposes of subsection (5)—

“co-operative society” does not include a society which carries on or intends to carry on business with the object of making profits mainly for the payment

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of interest, dividends or bonuses on money invested or deposited with or lent to the society or any other person, and

“employment agency” has the meaning given by section 13(2) of the Employment Agencies Act 1973 (c. 35).

*Special rules for earnings with a foreign element*

**353 Deductions from earnings charged on remittance**

- (1) A deduction is allowed from earnings charged on remittance for expenses within subsection (2) if the condition in subsection (3) is met.
- (2) The expenses are—
  - (a) any expenses—
    - (i) paid by the employee out of the earnings, or
    - (ii) paid on the employee's behalf by another person and included in the earnings, and
  - (b) any other expenses paid in the United Kingdom in the tax year or an earlier tax year in which the employee has been resident in the United Kingdom.
- (3) The condition is that the expenses would have been deductible under sections 336 to 342 if the earnings had been earnings charged on receipt in the tax year in which the expenses were incurred.
- (4) Where—
  - (a) any of the deductibility provisions refers to amounts or expenses that would be deductible from earnings if they were paid by a person, and
  - (b) the earnings in question are earnings charged on remittance,
 it is assumed for the purposes of those provisions that the person pays the amounts or expenses out of those earnings.

**354 Disallowance of expenses relating to earnings taxed on different basis or untaxed**

- (1) If the earnings from an employment for a tax year include both earnings charged on receipt and other earnings (except earnings charged under section 22), no deduction is allowed under sections 336 to 342 from the earnings charged on receipt for an amount paid in respect of duties of the employment to which the other earnings relate.
- (2) If the earnings from an employment for a tax year include both earnings charged on remittance under section 26 and other earnings, no deduction is allowed under section 353 from the earnings charged on remittance for an amount paid in respect of duties of the employment to which the other earnings relate.
- (3) This section is to be disregarded for the purposes of the deductibility provisions.

**355 Deductions for corresponding payments by non-domiciled employees with foreign employers**

- (1) An employee may make a claim to the Board of Inland Revenue under this section if conditions A to D are met.
- (2) Condition A is that the employee is not domiciled in the United Kingdom.

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- (3) Condition B is that the employment is with a foreign employer.
- (4) Condition C is that the employee has made a payment out of earnings from the employment.
- (5) Condition D is that the payment does not reduce the employee’s liability to United Kingdom income tax, but was made in circumstances corresponding to those in which it would do so.
- (6) If the Board are satisfied that conditions A to D are met, they may allow the payment as a deduction under this Chapter.

#### *Disallowance of business entertainment and gifts expenses*

### **356 Disallowance of business entertainment and gifts expenses**

- (1) No deduction from earnings is allowed under this Part for expenses incurred in providing entertainment or a gift in connection with the employer’s trade, business, profession or vocation.
- (2) Subsection (1) is subject to the exceptions in—
  - (a) section 357 (exception where employer’s expenses disallowed), and
  - (b) section 358 (other exceptions).
- (3) For the purposes of this section and those sections—
  - (a) “entertainment” includes hospitality of any kind, and
  - (b) expenses incurred in providing entertainment or a gift include expenses incurred in providing anything incidental to the provision of entertainment or a gift.

### **357 Business entertainment and gifts: exception where employer’s expenses disallowed**

- (1) The prohibition in section 356 on deducting expenses does not apply if—
  - (a) the earnings include an amount in respect of the expenses,
  - (b) the employer—
    - (i) paid the amount to, or on behalf of, the employee, or
    - (ii) put it at the employee’s disposal,exclusively for meeting expenses incurred or to be incurred by the employee in providing the entertainment or gift, and
  - (c) condition A, B or C is met.
- (2) Condition A is that the deduction of the amount falls to be disallowed under <sup>[F102]</sup>section 45 or 867 of ITTOIA 2005 or under] section 577 of ICTA in calculating the employer’s profits from the trade, profession or vocation in question for the purposes of the Tax Acts (or it would do so apart from the exemption in section 505(1)(e) of ICTA or any relief applying in respect of those profits).
- <sup>[F103]</sup>(3) Condition B is that the inclusion of the amount falls to be disallowed (or would be disallowed apart from some other relief applying to the employer) under that section in calculating—

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- (a) the employer’s expenses of management for the purposes of giving relief under the Tax Acts, or
  - (b) the employer’s expenses deduction under section 76 of ICTA (companies carrying on life assurance business).]
- (4) Condition C is that—
- (a) the employer is a tonnage tax company during the whole or part of the tax year, and
  - (b) apart from the tonnage tax election, the deduction of the amount included in the employee’s earnings would fall to be disallowed in calculating the employer’s relevant shipping profits.
- (5) In subsection (4) “tonnage tax company”, “tonnage tax election” and “relevant shipping profits” have the same meaning as in Schedule 22 to FA 2000.

#### **Textual Amendments**

**F102** Words in s. 357(2) inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 593](#) (with [Sch. 2](#))

**F103** S. 357(3) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 \(Consequential Amendment of Enactments\) Order 2004 \(S.I. 2004/2310\)](#), art. 1(2), [Sch. para. 68\(2\)](#)

### **358 Business entertainment and gifts: other exceptions**

- (1) The prohibition in section 356 on deducting expenses does not apply if the expenses are incurred in providing entertainment or gifts for the employer’s employees unless—
  - (a) they are also provided for others, and
  - (b) their provision for the employees is incidental to their provision for the others.
- (2) For this purpose directors and persons engaged in the management of a company are regarded as employed by it.
- (3) The prohibition in section 356 on deducting expenses does not apply if the expenses are incurred in providing a gift which incorporates a conspicuous advertisement for the employer or, if the employer is a company, another company which belongs to the same group as the employer, unless—
  - (a) the gift is food, drink, tobacco or a token or voucher exchangeable for goods, or
  - (b) the cost of the gift to the donor, together with any other gifts (except food, drink, tobacco or tokens or vouchers exchangeable for goods) given to the same person in the same tax year, is more than £50.
- (4) In subsection (3) “group” means a body corporate and its 51% subsidiaries.

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### *Other rules preventing deductions of particular kinds*

#### **359 Disallowance of travel expenses: mileage allowances and reliefs**

- (1) No deduction may be made under the travel deductions provisions in respect of travel expenses incurred in connection with the use by the employee of a vehicle that is not a company vehicle if condition A or B is met.
- (2) Condition A is that mileage allowance payments are made to the employee in respect of the use of the vehicle.
- (3) Condition B is that mileage allowance relief is available in respect of the use of the vehicle by the employee (see section 231).
- (4) In this section—
  - “company vehicle” has the meaning given by section 236(2),
  - “mileage allowance payments” has the meaning given by section 229(2), and
  - “the travel deductions provisions” means sections 337 to 342, 370, 371, 373 and 374 (travel expenses) and section 351 (expenses of ministers of religion).

#### **360 Disallowance of certain accommodation expenses of MPs and other representatives**

- (1) No deduction from earnings is allowed under this Chapter or section 373 (non-domiciled employee's travel costs and expenses where duties performed in UK) for accommodation expenses incurred by a member of—
  - (a) the House of Commons,
  - (b) the Scottish Parliament,
  - (c) the National Assembly for Wales, or
  - (d) the Northern Ireland Assembly.
- (2) In this section “accommodation expenses” means expenses incurred in, or in connection with, the provision or use of residential or overnight accommodation to enable the member to perform duties as a member of the Parliament or Assembly in or about—
  - (a) the place where it sits, or
  - (b) the constituency or region which the member represents.

#### **[<sup>F104</sup>360A] Social security contributions**

- (1) No deduction from earnings is allowed under this Chapter for any contribution paid by any person under Part 1 of SSCBA 1992 or Part 1 of SSCB(NI)A 1992.
- (2) But this prohibition does not apply to an employer's contribution (see subsection (3)) which is allowable as a deduction—
  - (a) under section 336 (the general rule),
  - (b) under any of sections 337 to 342 (travel expenses), or
  - (c) under section 351(1) (expenses of ministers of religion).
- (3) For this purpose “an employer's contribution” means—
  - (a) a secondary Class 1 contribution,
  - (b) a Class 1A contribution, or

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- (c) a Class 1B contribution,  
 within the meaning of Part 1 of SSCBA 1992 or Part 1 of SSCB(NI)A 1992.]

**Textual Amendments**

**F104** S. 360A inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 594](#) (with Sch. 2)

## CHAPTER 3

### DEDUCTIONS FROM BENEFITS CODE EARNINGS

#### *Introduction*

#### **361 Scope of this Chapter: cost of benefits deductible as if paid by employee**

A deduction from a person's earnings is allowed under the following provisions of this Chapter where—

- (a) the earnings include an amount treated as earnings under—
  - (i) Chapter 4 of Part 3 (taxable benefits: vouchers and credit-tokens),
  - (ii) Chapter 5 of Part 3 (taxable benefits: living accommodation), or
  - (iii) Chapter 10 of Part 3 (taxable benefits: residual liability to charge), and
- (b) an amount in respect of the benefit in question would be deductible under Chapter 2 or 5 of this Part if the person had incurred and paid it.

*Deductions where amounts treated as earnings under the benefits code*

#### **362 Deductions where non-cash voucher provided**

- (1) A deduction from earnings is allowed if—
  - (a) the earnings include an amount treated as earnings under section 87(1) (cash equivalent of benefit of non-cash voucher treated as earnings),
  - (b) the voucher is exchanged for goods or services (whether in the tax year or a later year), and
  - (c) had the employee incurred and paid the cost of the goods or services in the tax year, the whole or part of the amount paid would have been deductible from the earnings under Chapter 2 or 5 of this Part.
- (2) The deduction is equal to the lesser of—
  - (a) the amount treated as earnings, and
  - (b) the amount that would have been so deductible.

#### **363 Deductions where credit-token provided**

- (1) A deduction from earnings is allowed if—
  - (a) the earnings include an amount treated as earnings under section 94(1) (cash equivalent of benefit of credit-token treated as earnings), and



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- (b) had the employee incurred and paid the cost of the goods or services obtained by using the token, the whole or part of the amount paid would have been deductible from the earnings under Chapter 2 or 5 of this Part.
- (2) The deduction is equal to the lesser of—
- (a) the amount treated as earnings, and
  - (b) the amount that would have been so deductible.

### **364 Deductions where living accommodation provided**

- (1) A deduction from earnings is allowed if—
- (a) the earnings include an amount treated as earnings under Chapter 5 of Part 3 (taxable benefits: living accommodation), and
  - (b) had the employee incurred and paid an amount equal to that amount for the accommodation in the tax year, the whole or part of the amount paid would have been deductible under Chapter 2 or 5 of this Part.
- (2) The deduction is equal to the amount that would have been so deductible.

### **365 Deductions where employment-related benefit provided**

- (1) A deduction from earnings is allowed if—
- (a) the earnings include an amount treated as earnings under Chapter 10 of Part 3 (taxable benefits: residual liability to charge) in respect of a benefit, and
  - (b) had the employee incurred and paid the cost of the benefit, the whole or part of the amount paid would have been deductible under Chapter 2 or 5 of this Part.
- (2) The deduction is equal to the amount that would have been so deductible.
- (3) For the purposes of this section, the cost of the benefit is determined in accordance with sections 204 to 206.

## **CHAPTER 4**

### **FIXED ALLOWANCES FOR EMPLOYEE'S EXPENSES**

#### *Introduction*

### **366 Scope of this Chapter: amounts fixed by Treasury**

A deduction from an employee's earnings for an amount is allowed under this Chapter where the amount has been fixed by the Treasury by reference to the employee's employment.

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### *Fixed sum deductions*

#### **367 Fixed sum deductions for repairing and maintaining work equipment**

- (1) A deduction is allowed for the sum, if any, fixed by the Treasury as in their opinion representing the average annual expenses incurred by employees of the class to which the employee belongs in respect of the repair and maintenance of work equipment.
- (2) The Treasury may only fix such a sum for a class of employees if they are satisfied that—
  - (a) the employees are generally responsible for the whole or part of the expense of repairing and maintaining the work equipment, and
  - (b) the expenses for which they are generally responsible would be deductible from the employees' earnings under section 336 if paid by them.
- (3) No deduction is allowed under this section if the employer pays or reimburses the expenses in respect of which the sum is fixed or would do so if requested.
- (4) If the employer pays or reimburses part of those expenses or would do so if requested, the amount of the deduction is reduced by the amount which is or would be paid or reimbursed.
- (5) In this section “work equipment” means tools or special clothing.
- (6) This section needs to be read with section 330(2) (prevention of double deductions).

#### **368 Fixed sum deductions from earnings payable out of public revenue**

- (1) A deduction is allowed from earnings payable out of the public revenue for the employee's fixed sum expenses in respect of the duties to which the earnings relate.
- (2) “Fixed sum expenses” means the sum, if any, fixed by the Treasury as in their opinion representing the average annual expenses which employees of the employee's description are obliged to pay wholly, exclusively and necessarily in the performance of duties to which such earnings relate.
- (3) This section needs to be read with section 330(2) (prevention of double deductions).

## **CHAPTER 5**

### DEDUCTIONS FOR EARNINGS REPRESENTING BENEFITS OR REIMBURSED EXPENSES

#### *Introduction*

#### **369 Scope of this Chapter: earnings representing benefits or reimbursed expenses**

- (1) A deduction from a person's earnings for an amount is allowed under the following provisions of this Chapter where the amount is included in the earnings in respect of—
  - (a) provision made for the person, or
  - (b) expenses reimbursed by another person.
- (2) In this Chapter references to “the included amount” are references to the amount so included.

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- (3) If the included amount is an amount treated as earnings under—
- (a) Chapter 4 of Part 3 (taxable benefits: vouchers and credit-tokens),
  - (b) Chapter 5 of Part 3 (taxable benefits: living accommodation), or
  - (c) Chapter 10 of Part 3 (taxable benefits: residual liability to charge),
- a deduction may be allowed instead in respect of the benefit in question under Chapter 3 of this Part (deductions from benefits code earnings).

*Travel costs and expenses where duties performed abroad*

**370 Travel costs and expenses where duties performed abroad: employee's travel**

- (1) A deduction is allowed from earnings which are taxable earnings under section 15 or 21 (earnings for year when employee resident and ordinarily resident in UK) if—
- (a) the earnings include an amount in respect of—
    - (i) the provision of travel facilities for a journey made by the employee, or
    - (ii) the reimbursement of expenses incurred by the employee on such a journey, and
  - (b) the circumstances fall within Case A, B or C.
- (2) The deduction is equal to the included amount.
- (3) Case A is where—
- (a) the employee is absent from the United Kingdom wholly and exclusively for the purpose of performing the duties of one or more employments,
  - (b) the duties concerned can only be performed outside the United Kingdom, and
  - (c) the journey is—
    - (i) a journey from a place outside the United Kingdom where such duties are performed to a place in the United Kingdom, or
    - (ii) a return journey following such a journey.
- (4) Case B is where—
- (a) the duties of the employment are performed partly outside the United Kingdom,
  - (b) those duties are not performed on a vessel,
  - (c) the journey is between a place in the United Kingdom and a place outside the United Kingdom where duties of the employment are performed,
  - (d) the duties performed outside the United Kingdom can only be performed there, and
  - (e) the journey is made wholly and exclusively for the purpose of performing them or returning after performing them.
- (5) Case C is where—
- (a) the duties of the employment are performed partly outside the United Kingdom,
  - (b) those duties are performed on a vessel,
  - (c) the journey is between a place in the United Kingdom and a place outside the United Kingdom where duties of the employment are performed,

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- (d) the duties performed outside the United Kingdom can only be performed there, and
- (e) the journey is made wholly and exclusively for the purpose of performing those duties, or those duties and other duties of the employment, or returning after performing them.

### **371 Travel costs and expenses where duties performed abroad: visiting spouse's or child's travel**

- (1) A deduction is allowed from earnings which are taxable earnings under section 15 or 21 (earnings for year when employee resident and ordinarily resident in UK) if—
  - (a) the earnings include an amount in respect of—
    - (i) the provision of travel facilities for a journey made by the employee's spouse or child, or
    - (ii) the reimbursement of expenses incurred by the employee on such a journey, and
  - (b) conditions A to C are met.
- (2) The deduction is equal to the included amount.
- (3) Condition A is that the employee is absent from the United Kingdom for a continuous period of at least 60 days for the purpose of performing the duties of one or more employments.
- (4) Condition B is that the journey is between a place in the United Kingdom and a place outside the United Kingdom where such duties are performed.
- (5) Condition C is that the employee's spouse or child is—
  - (a) accompanying the employee at the beginning of the period of absence,
  - (b) visiting the employee during that period, or
  - (c) returning to a place in the United Kingdom after so accompanying or visiting the employee.
- (6) A deduction is not allowed under this section for more than two outward and two return journeys by the same person in a tax year.
- (7) In this section "child" includes a stepchild and an illegitimate child, but not a person who is 18 or over at the beginning of the outward journey.

### **372 Where seafarers' duties are performed**

For the purposes of—

- (a) section 370 (employee's travel costs and expenses where duties performed abroad), and
- (b) section 371 (visiting spouse's or child's travel costs and expenses where duties performed abroad),

whether duties performed on a vessel are performed in or outside the United Kingdom is determined without regard to section 40(2) (certain duties treated as performed in UK).

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### *Travel costs and expenses of non-domiciled employees where duties performed in UK*

#### **373 Non-domiciled employee’s travel costs and expenses where duties performed in UK**

- (1) This section applies if a person (“the employee”) who is not domiciled in the United Kingdom—
  - (a) receives earnings from an employment for duties performed in the United Kingdom, and
  - (b) an amount is included in the earnings in respect of—
    - (i) the provision of travel facilities for a journey made by the employee, or
    - (ii) the reimbursement of expenses incurred by the employee on such a journey.
- (2) A deduction is allowed from earnings from the employment which are earnings charged on receipt if the journey meets conditions A and B.
- (3) Condition A is that the journey ends on, or during the period of 5 years beginning with, a date that is a qualifying arrival date in relation to the employee (see section 375).
- (4) Condition B is that the journey is made—
  - (a) from the country outside the United Kingdom in which the employee normally lives to a place in the United Kingdom in order to perform duties of the employment, or
  - (b) to that country from a place in the United Kingdom in order to return to that country after performing such duties.
- (5) If the journey is wholly for a purpose specified in subsection (4), the deduction is equal to the included amount.
- (6) If the journey is only partly for such a purpose, the deduction is equal to so much of the included amount as is properly attributable to that purpose.

#### **374 Non-domiciled employee’s spouse’s or child’s travel costs and expenses where duties performed in UK**

- (1) This section applies if a person (“the employee”) who is not domiciled in the United Kingdom—
  - (a) receives earnings from an employment for duties performed in the United Kingdom, and
  - (b) an amount is included in the earnings in respect of—
    - (i) the provision of travel facilities for a journey made by the employee’s spouse or child, or
    - (ii) the reimbursement of expenses incurred by the employee on such a journey.
- (2) A deduction is allowed from earnings from the employment which are earnings charged on receipt if conditions A to C are met.
- (3) Condition A is that the journey—
  - (a) is made between the country outside the United Kingdom in which the employee normally lives and a place in the United Kingdom, and

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- (b) ends on, or during the period of 5 years beginning with, a date that is a qualifying arrival date in relation to the employee (see section 375).
- (4) Condition B is that the employee is in the United Kingdom for a continuous period of at least 60 days for the purpose of performing the duties of one or more employments from which the employee receives earnings for duties performed in the United Kingdom.
- (5) Condition C is that the employee’s spouse or child is—
  - (a) accompanying the employee at the beginning of that period,
  - (b) visiting the employee during that period, or
  - (c) returning to the country outside the United Kingdom in which the employee normally lives, after so accompanying or visiting the employee.
- (6) If the journey is wholly for the purpose of so accompanying or visiting the employee or so returning, the deduction is equal to the included amount.
- (7) If the journey is only partly for that purpose, the deduction is equal to so much of the included amount as is properly attributable to that purpose.
- (8) A deduction is not allowed under this section for more than two inward journeys and two return journeys by the same person in a tax year.
- (9) In this section “child” includes a stepchild and an illegitimate child, but not a person who is 18 or over at the beginning of the inward journey.

### **375 Meaning of “qualifying arrival date”**

- (1) For the purposes of sections 373(3) and 374(3), a date is a qualifying arrival date in relation to a person if—
  - (a) it is a date on which the person arrives in the United Kingdom to perform duties of an employment from which the person receives earnings for duties performed in the United Kingdom, and
  - (b) condition A or B is met.
- (2) Condition A is that the person has not been in the United Kingdom for any purpose during the period of 2 years ending with the day before the date.
- (3) Condition B is that the person was not resident in the United Kingdom in either of the 2 tax years preceding the tax year in which the date falls.
- (4) If, in a case where condition B applies, there are 2 or more dates in the tax year on which the person arrives in the United Kingdom to perform duties of an employment from which the person receives earnings for duties performed in the United Kingdom, the qualifying arrival date is the earliest of them.

### *Foreign accommodation and subsistence costs and expenses*

### **376 Foreign accommodation and subsistence costs and expenses (overseas employments)**

- (1) A deduction from earnings from an employment is allowed if—
  - (a) the duties of the employment are performed wholly outside the United Kingdom,

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- (b) the employee is resident and ordinarily resident in the United Kingdom,
  - (c) in a case where the employer is a foreign employer, the employee is domiciled in the United Kingdom, and
  - (d) the earnings include an amount in respect of—
    - (i) the provision of accommodation or subsistence outside the United Kingdom for the employee for the purpose of enabling the employee to perform the duties of the employment, or
    - (ii) the reimbursement of expenses incurred by the employee on such accommodation or subsistence for that purpose.
- (2) If the accommodation or subsistence is wholly for that purpose, the deduction is equal to the included amount.
- (3) If the accommodation or subsistence is only partly for that purpose, the deduction is equal to so much of the included amount as is properly attributable to that purpose.
- (4) Subsection (5) applies if in the tax year the employment is in substance one whose duties fall to be performed outside the United Kingdom.
- (5) Duties of the employment performed in the United Kingdom, whose performance is merely incidental to the performance of duties outside the United Kingdom, are to be treated for the purposes of subsection (1)(a) as performed outside the United Kingdom.

#### *Personal security assets and services*

### **377 Costs and expenses in respect of personal security assets and services**

- (1) This section applies if—
- (a) there is a special threat to an employee’s personal physical security which arises wholly or mainly because of the employee’s employment,
  - (b) an asset or service which improves personal security is provided for or used by the employee to meet the threat,
  - (c) the employee’s earnings include an amount in respect of—
    - (i) the provision or use, or
    - (ii) expenses connected with it,because the whole or part of the cost of the provision or use is borne, or the expenses are reimbursed to the employee, by or on behalf of another person (“the provider”), and
  - (d) the provider’s sole object in bearing the whole or part of the cost or reimbursing the expenses is meeting the threat.
- (2) In the case of such an asset, if the provider intends it to be used solely for the purpose of improving personal physical security, a deduction equal to the included amount is allowed.
- (3) If the provider intends the asset to be used solely to improve personal physical security, any use of the asset incidental to that purpose is ignored.
- (4) If the provider intends the asset to be used only partly to improve personal physical security, a deduction equal to the proportion of the included amount attributable to the intended use for that purpose is allowed.

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- (5) In determining whether or not this section applies in relation to an asset, it does not matter if—
- (a) the asset becomes fixed to land (even a dwelling or grounds), or
  - (b) the employee is or becomes entitled—
    - (i) to the property in the asset, or
    - (ii) if the asset is a fixture, to any estate or interest in the land concerned.
- (6) In the case of a service within subsection (1), if the benefit resulting to the employee consists wholly or mainly of an improvement of the employee's personal physical security, a deduction equal to the included amount is allowed.
- (7) The fact that an asset or a service improves the personal physical security of a member of the employee's family or household, as well as that of the employee, does not prevent a deduction being allowed.
- (8) In this section—
- “asset” includes equipment or a structure (such as a wall), but not a car, ship or aircraft or a dwelling or grounds appurtenant to a dwelling, and
- “service” does not include a dwelling or grounds appurtenant to a dwelling.

## CHAPTER 6

### DEDUCTIONS FROM SEAFARERS' EARNINGS

#### **378 Deduction from seafarers' earnings: eligibility**

- (1) A deduction is allowed from earnings from an employment as a seafarer if—
- (a) the earnings are taxable earnings under section 15 or 21 (earnings for year when employee resident and ordinarily resident in UK),
  - (b) the duties of the employment are performed wholly or partly outside the United Kingdom, and
  - (c) any of those duties are performed in the course of an eligible period.
- (2) In this Chapter “eligible period” means a period consisting of at least 365 days which is either—
- (a) a period of consecutive days of absence from the United Kingdom, or
  - (b) a combined period.
- (3) A combined period is a period—
- (a) at least half of the days in which are days of absence from the United Kingdom, and
  - (b) which consists of 3 consecutive periods, A, B and C, where—
 

A is a period of consecutive days of absence from the United Kingdom or a period which is itself a combined period,

B is a period of not more than 183 days, and

C is a period of consecutive days of absence from the United Kingdom.
- (4) For this purpose a person is only regarded as being absent from the United Kingdom on any day if absent at the end of the day.



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### **379 Calculating the deduction**

- (1) The deduction under section 378—
  - (a) is allowed from the amount of the earnings from the employment attributable to the eligible period, and
  - (b) is equal to that amount.
- (2) Earnings from the employment for a period of leave immediately after the eligible period are to be regarded as earnings attributable to the eligible period if or to the extent that they are earnings for the tax year in which the eligible period ends.
- (3) This section is subject to section 380 (limit on deduction where UK duties etc. make amount unreasonable).

### **380 Limit on deduction where UK duties etc. make amount unreasonable**

- (1) If—
  - (a) section 378 (deduction from seafarers' earnings: eligibility) applies to earnings for a tax year, and
  - (b) in the tax year the employee performs some of the duties of the employment as a seafarer or of any associated employments in the United Kingdom,the amount of earnings in respect of which the deduction under this Chapter is allowed is subject to the following limitation.
- (2) The amount is restricted to the proportion of the aggregate earnings for that year from the employment as a seafarer and all associated employments that is reasonable having regard to—
  - (a) the nature of and time devoted to the duties performed outside and in the United Kingdom, and
  - (b) all other relevant circumstances.
- (3) In this section “associated employments” means employments with the same employer or with associated employers.
- (4) The same rules for determining whether employers are associated apply for the purposes of this section as apply for section 24(4) (limit on chargeable overseas earnings where duties of associated employment performed in UK) (see section 24(5)).

### **381 Taking account of other deductions**

For the purposes of sections 379 and 380, the amount of the earnings from an employment for a tax year is the amount remaining after any deductions under—

- (a) section 232 (giving effect to mileage allowance relief),
- (b) Chapter 2, 3, 4 or 5 of this Part,
- (c) section 592(7) of ICTA (contributions to exempt approved schemes),
- (d) section 594(1) of ICTA (contributions to exempt statutory schemes), and
- (e) section 262 of CAA 2001 (capital allowances to be given effect by treating them as deductions from earnings).

### **382 Duties on board ship**

- (1) Duties which a person performs on a ship engaged—

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- (a) on a voyage beginning or ending outside the United Kingdom (but excluding any part of it beginning and ending in the United Kingdom), or
  - (b) on a part beginning or ending outside the United Kingdom of any other voyage,
- are treated as performed outside the United Kingdom for the purposes of this Chapter.
- (2) Duties which a person performs on a vessel engaged on a voyage not extending to a port outside the United Kingdom are treated for the purposes of this Chapter as performed in the United Kingdom.
  - (3) For the purposes of subsection (1) the areas designated under section 1(7) of the Continental Shelf Act 1964 (c. 29) are treated as part of the United Kingdom.
  - (4) Subsection (1) applies despite anything to the contrary in section 40 (duties on board vessel or aircraft).

### **383 Place of performance of incidental duties**

- (1) For the purposes of section 378(1)(b) (deduction from seafarers' earnings: eligibility), duties of an employment as a seafarer which are performed outside the United Kingdom are treated as performed in the United Kingdom if conditions A and B are met.
- (2) Condition A is that in the tax year in which the duties are performed the employment is in substance one whose duties fall to be performed in the United Kingdom.
- (3) Condition B is that the performance of the duties performed outside the United Kingdom is merely incidental to the performance of duties in the United Kingdom.
- (4) Section 39 (duties in UK merely incidental to duties outside UK) does not affect the question—
  - (a) where any duties are performed, or
  - (b) whether a person is absent from the United Kingdom,
 for the purposes of section 378(1) to (3).

### **384 Meaning of employment “as a seafarer”**

- (1) In this Chapter employment “as a seafarer” means an employment (other than Crown employment) consisting of the performance of duties on a ship or of such duties and others incidental to them.
- (2) In this section “Crown employment” means employment under the Crown—
  - (a) which is of a public nature, and
  - (b) the earnings from which are payable out of the public revenue of the United Kingdom or of Northern Ireland.

### **[<sup>F105</sup>385 Meaning of “ship”**

In this Chapter “ship” does not include an offshore installation.]

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### Textual Amendments

**F105** S. 385 substituted (with effect in accordance with Sch. 27 para. 16 of the amending Act) by Finance Act 2004 (c. 12), Sch. 27 para. 14

## PART 6

### EMPLOYMENT INCOME: INCOME WHICH IS NOT EARNINGS OR SHARE-RELATED

## CHAPTER 1

### PAYMENTS TO NON-APPROVED PENSION SCHEMES

#### 386 Charge on payments to non-approved retirement benefits schemes

- (1) A sum paid by an employer—
  - (a) in accordance with a non-approved retirement benefits scheme, and
  - (b) with a view to the provision of relevant benefits for or in respect of an employee of the employer,counts as employment income of the employee for the relevant tax year.
- (2) The “relevant tax year” is the tax year in which the sum is paid.
- (3) Subsection (1) does not apply if or to the extent that the sum is chargeable to income tax as the employee’s income apart from this section.
- (4) But if, apart from this section, the payment of the sum would be a payment to which Chapter 3 of this Part (payments and benefits on termination of employment etc.) would apply, subsection (1) applies to the sum (and accordingly that Chapter does not apply to it).
- (5) In this Chapter—
  - (a) “employee” includes a person who is to be or has been an employee,
  - (b) section 5(1) (application to offices) does not apply, but “employee”, in relation to a company, includes any officer or director of the company and any other person taking part in the management of the affairs of the company,
  - (c) “employer” and “employment” have meanings corresponding to the meaning of “employee” given by paragraphs (a) and (b),
  - (d) “director” has the meaning given by section 612(1) of ICTA, and
  - (e) “relevant benefits” has the meaning given by that section, and section 612(2) of ICTA applies to references in this Chapter to the provision of relevant benefits as it applies to such references in Chapter 1 of Part 14 of ICTA.
- (6) For the purposes of this Chapter benefits are provided in respect of an employee if they are provided for the employee’s spouse, widow or widower, children, dependants or personal representatives.
- (7) Any liability to tax arising by virtue of this section is subject to the reliefs given under—
  - (a) section 392 (relief where no benefits are paid or payable), and

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(b) section 266A of ICTA (life assurance premiums paid by employer).

### 387 Meaning of “non-approved retirement benefits scheme”

- (1) In this Chapter “retirement benefits scheme” has the meaning given by section 611 of ICTA.
- (2) For the purposes of this Chapter, a retirement benefits scheme is “non-approved” unless it is—
  - (a) an approved scheme,
  - (b) a relevant statutory scheme, or
  - (c) a scheme set up by a government outside the United Kingdom for the benefit of its employees or primarily for their benefit.
- (3) In this section—
  - “approved scheme” has the meaning given by section 612(1) of ICTA, and
  - “relevant statutory scheme” has the meaning given by section 611A of ICTA.

### 388 Apportionment of payments in respect of more than one employee

- (1) If a sum within section 386 is paid for or in respect of two or more employees, part of it is treated as paid in respect of each of them.
- (2) The amount treated as paid in respect of each employee is—

$$A \times \frac{B}{C}$$

where—

A is the sum paid,

B is the amount which would have had to be paid to secure the benefits to be provided in respect of the employee in question, and

C is the total amount which would have had to be paid to secure the benefits to be provided in respect of all the employees if separate payments had been made in the case of each of them.

#### Modifications etc. (not altering text)

- C3** S. 388 applied by 1988 c. 1, s. 266A(5) (as inserted (6.4.2003 with effect in accordance with s. 723(1) (a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 36](#) (with [Sch. 7](#))

### <sup>F106</sup>389 Exception: employments where earnings charged on remittance

Section 386 does not apply if in the tax year in which the sum is paid the earnings from the employment are not (or would not have been if there were any) general earnings to which any of the following provisions applies—

- (a) section 15 (employee resident, ordinarily resident and domiciled in UK),

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- (b) section 21 (employee resident and ordinarily resident, but not domiciled in UK),
- (c) section 25 (employee resident but not ordinarily resident in UK),
- (d) section 27 (UK-based earnings for year when employee not resident in UK).]

#### Textual Amendments

**F106** S. 389 substituted (with effect in accordance with Sch. 17 para. 2(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 17 para. 2\(1\)](#)

### 390 Exception: non-domiciled employees with foreign employers

Section 386 does not apply if—

- (a) the employee is not domiciled in the United Kingdom in the tax year in which the sum is paid,
- (b) the employment is with a foreign employer, and
- (c) on a claim made by the employee the Board of Inland Revenue are satisfied that the scheme corresponds to a scheme within section 387(2)(a), (b) or (c).

### 391 Exception: seafarers with overseas earnings

Section 386 does not apply if—

- (a) the sum is paid in a period that is an eligible period in relation to the employee's employment for the purposes of Chapter 6 of Part 5 (deductions from seafarers' earnings) (see section 378(2)), and
- (b) a deduction is allowed under section 378 from the employee's earnings that are attributable to that period.

### 392 Relief where no benefits are paid or payable

(1) An application for relief may be made to the Inland Revenue if—

- (a) a sum is charged to tax by virtue of section 386 in respect of the provision of any benefits,
- (b) no payment in respect of, or in substitution for, the benefits has been made, and
- (c) an event occurs by reason of which no such payment will be made.

(2) The application must be made within 6 years from the time when the event occurs.

(3) The application must be made by the employee or, if the employee has died, the employee's personal representatives.

(4) If the Inland Revenue are satisfied that the conditions in subsection (1) are met in relation to the whole sum, they must give relief in respect of tax on it by repayment or otherwise as appropriate, unless subsection (6) applies.

(5) If the Inland Revenue are satisfied that the conditions in subsection (1) are met in relation to part of the sum, they may give such relief in respect of tax on it as is just and reasonable, unless subsection (6) applies.

(6) This subsection applies if—

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- (a) the reason why no payment has been made in respect of, or in substitution for, the benefits, or
  - (b) the event by reason of which there will be no such payment,
- is a reduction or cancellation of the employee's rights in respect of the benefits, or part of the benefits, as a consequence of a pension sharing order or provision.
- (7) In subsection (6) “pension sharing order or provision” means any such order or provision as is mentioned in—
- (a) section 28(1) of WRPA 1999 (rights under pension sharing arrangements), or
  - (b) Article 25(1) of WRP(NI)O 1999 (provision for Northern Ireland corresponding to section 28(1) of WRPA 1999).

## CHAPTER 2

### BENEFITS FROM NON-APPROVED PENSION SCHEMES

#### *Benefits treated as employment income*

### 393 Application of this Chapter

- (1) This Chapter applies to any benefit provided under a non-approved retirement benefits scheme [<sup>F107</sup>other than a scheme established by an order under section 1(2) of the Armed Forces (Pensions and Compensation) Act 2004 (armed and reserve forces compensation schemes)].
- (2) But this Chapter does not apply to a benefit which is charged to tax under Part 9 (pension income).

#### **Textual Amendments**

**F107** Words in s. 393(1) inserted (with effect in accordance with s. 19(7) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 19\(2\)](#)

### 394 Charge on benefit to which this Chapter applies

- (1) If a benefit to which this Chapter applies is received by an individual, the amount of the benefit counts as employment income of the individual for the relevant tax year.
- (2) If a benefit to which this Chapter applies is received by a person who is not an individual, the administrator of the scheme under which the benefit is provided is chargeable [<sup>F108</sup>to income tax] on the amount of the benefit for the relevant tax year.
- (3) In subsections (1) and (2) the “relevant tax year” is the tax year in which the benefit is received.
- (4) For the purposes of subsection (2), the rate of tax is 40% or such other rate as may for the time being be specified by the Treasury by order.
- (5) No liability to income tax arises by virtue of any other provision of this Act in respect of a benefit to which this Chapter applies.

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#### Textual Amendments

**F108** Words in s. 394(2) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 595](#) (with [Sch. 2](#))

#### Modifications etc. (not altering text)

**C4** S. 394 restricted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 36 paras. 54\(2\)\(3\)\(a\)](#), [55\(2\)](#) (with s. 283(5), [Sch. 36](#))

### 395 Application of sections 396 and 397: general rules

- (1) Section 394 is subject to—
  - (a) section 396 (which provides that certain lump sums are not taxed by virtue of section 394), and
  - (b) section 397 (which provides for the calculation of the amount taxed by virtue of section 394 in relation to certain lump sums).
- (2) Section 396 applies in relation to a lump sum only if the condition in subsection (4) below is met.
- (3) Section 397 applies in relation to a lump sum only if—
  - (a) the condition in subsection (4) below is met, or
  - (b) an employee has paid any sum or sums with a view to the provision of any relevant benefits under the scheme under which the lump sum is provided.
- (4) The condition mentioned in subsections (2) and (3)(a) is that—
  - (a) an employer has paid any sum or sums with a view to the provision of any relevant benefits under the scheme under which the lump sum is provided, and
  - (b) an employee has been assessed to tax in respect of the sum or sums so paid—
    - (i) by virtue of section 595(1) of ICTA, or
    - (ii) by virtue of the sum or sums counting as employment income of the employee under section 386(1) of this Act.
- (5) For the purposes of this section it must be assumed that, unless the contrary is shown—
  - (a) no sums have been paid with a view to the provision of relevant benefits, and
  - (b) an employee has not been assessed in respect of a sum or sums as mentioned in subsection (4)(b).

#### Modifications etc. (not altering text)

**C5** S. 395 modified (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 36 paras. 54\(3\)\(b\)](#), [55\(3\)](#) (with s. 283(5), [Sch. 36](#))

### 396 Certain lump sums not taxed by virtue of section 394

- (1) Section 394 does not apply to a lump sum if—
  - (a) all of the income and gains accruing to the scheme under which the lump sum is provided are brought into charge to tax, and
  - (b) the lump sum is provided to—
    - (i) the employee mentioned in section 395(4)(b),

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- (ii) a relative of that employee,
  - (iii) the personal representatives of that employee,
  - (iv) an ex-spouse of that employee, or
  - (v) any other individual designated by that employee.
- (2) For the purposes of this section it must be assumed that, unless the contrary is shown, the income and gains accruing to the scheme are not brought into charge to tax.

### 397 Certain lump sums: calculation of amount taxed by virtue of section 394

- (1) In a case where—
- (a) section 394 applies to a lump sum, and
  - (b) any of the income or gains accruing to the scheme under which the lump sum is provided is not brought into charge to tax,
- the amount which by virtue of that section counts as employment income, or is chargeable to tax under [F109 subsection (2) of that section], is determined in accordance with this section.
- (2) That amount is the amount of the lump sum reduced by the deduction applicable under subsection (3) or (4).
- (3) Subject to subsection (4), the deduction applicable is the aggregate of—
- (a) the sum or sums mentioned in section 395(3)(b) (if any), and
  - (b) the sum or sums mentioned in section 395(4)(b) (if any),
- which in either case were paid by way of contribution to the provision of the lump sum.
- (4) The deduction applicable is calculated in accordance with the formula in subsection (6) if—
- (a) the lump sum is provided under the scheme on the disposal of a part of any asset or the surrender of any part of or share in any rights in any asset, and
  - (b) a person falling within subsection (5) has a right to receive, or any expectation of receiving, a further lump sum or further lump sums under the scheme on a further disposal of any part of the asset or a further surrender of any part of or share in any rights in the asset.
- (5) The persons referred to in subsection (4)(b) are—
- (a) the employee,
  - (b) a relative of that employee,
  - (c) the personal representatives of that employee, or
  - (d) any person connected with that employee.
- (6) The formula referred to in subsection (4) is—

$$D = S \times \frac{LS}{MVA}$$

where—

D is the deduction applicable;

S is the aggregate amount of any sum or sums of a description mentioned in paragraphs (a) and (b) of subsection (3);



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LS is the amount of the lump sum received in relation to which the deduction applicable falls to be determined;

MVA is the market value of the asset in relation to which the disposal or surrender occurred, on the assumption that the valuation is made immediately before the disposal or surrender.

- (7) An individual may not claim that a deduction is applicable in relation to a lump sum more than once.
- (8) For the purposes of this section it must be assumed that, unless the contrary is shown—
  - (a) the income and gains accruing to the scheme are not brought into charge to tax, and
  - (b) no deduction is applicable under subsection (3) or (4).
- (9) For the purposes of this section income and gains accruing to the scheme are not to be regarded as brought into charge to tax merely because tax is charged in relation to the scheme in accordance with section 591C of ICTA.
- (10) In this section “market value” is to be construed in accordance with sections 272 and 273 of TCGA 1992.

#### Textual Amendments

**F109** Words in s. 397(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 596](#) (with [Sch. 2](#))

### *Valuation of benefits etc.*

#### **398 Valuation of benefits**

- (1) In the case of a cash benefit, for the purposes of this Chapter the amount of a benefit is taken to be the amount received.
- (2) In the case of a non-cash benefit, for the purposes of this Chapter the amount of a benefit is taken to be the greater of—
  - (a) the amount of earnings (as defined in Chapter 1 of Part 3) that the benefit would give rise to if it were received for performance of the duties of an employment (money’s worth), and
  - (b) the cash equivalent of the benefit under the benefits code if it were so received and the code applied to it.
- (3) For the purposes of subsection (2) the benefits code has effect with the modifications in subsections (4) to (6).
- (4) References in the benefits code to the employee are to be taken as references to the person by whom the benefit is received.
- (5) References in the benefits code to the employer are to be taken as including references to the former employer.
- (6) Where—

*Status: Point in time view as at 07/04/2005.*

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- (a) section 106 (cash equivalent: cost of accommodation over £75,000) applies, and
  - (b) the amount referred to in section 105(2)(b) (the sum made good) exceeds the amount referred to in section 105(2)(a) (the rental value),
- the amount to be subtracted under paragraph (b) of step 4 of the calculation in section 106(2) is that excess (and not only the excess rent referred to there).

### 399 Employment-related loans: interest treated as paid

- (1) This section applies if—
- (a) an amount consisting of, or including, an amount representing the benefit of a loan (“a taxable amount”) counts as employment income of an individual in a tax year under section 394(1), or
  - (b) the administrator of a scheme is charged to tax on a taxable amount <sup>F110</sup>... under section 394(2).
- (2) The individual or the administrator is to be treated for all purposes of the Tax Acts (other than this Chapter) as having paid interest on the loan in the tax year equal to the amount representing the cash equivalent of the loan.
- (3) The interest is to be treated—
- (a) as accruing during the period in the tax year during which the loan is outstanding, and
  - (b) as paid at the end of the period.
- (4) The interest is not to be treated—
- (a) as income of the person making the loan, or
  - (b) as relevant loan interest to which section 369 of ICTA applies (mortgage interest payable under deduction of tax).

#### Textual Amendments

**F110** Words in s. 399(1)(b) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 597](#), [Sch. 3](#) (with [Sch. 2](#))

### *Interpretation*

### 400 Interpretation

- (1) In this Chapter—
- “administrator”, in relation to a scheme, has the same meaning as in section 611AA of ICTA;
  - “employee” has the same meaning as in Chapter 1 of Part 14 of ICTA (see section 612(1) of ICTA);
  - “ex-spouse” means a party to a marriage that has been dissolved or annulled and, in relation to any person, means the other party to a marriage with that person that has been dissolved or annulled;
  - “non-approved retirement benefits scheme” has the same meaning as in Chapter 1 of this Part (see section 387);
  - “relative”, in relation to an individual, means—

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- (a) the wife or husband of the individual,
- (b) the widow or widower of the individual,
- (c) a child of the individual, and
- (d) a dependant of the individual;

“relevant benefits” has the same meaning as in section 612(1) of ICTA.

- (2) Section 612(2) of ICTA applies to the references in this Chapter to the provision of relevant benefits as it applies to such references in Chapter 1 of Part 14 of ICTA.

### CHAPTER 3

#### PAYMENTS AND BENEFITS ON TERMINATION OF EMPLOYMENT ETC.

##### *Preliminary*

#### **401 Application of this Chapter**

- (1) This Chapter applies to payments and other benefits which are received directly or indirectly in consideration or in consequence of, or otherwise in connection with—
  - (a) the termination of a person’s employment,
  - (b) a change in the duties of a person’s employment, or
  - (c) a change in the earnings from a person’s employment,by the person, or the person’s spouse, blood relative, dependant or personal representatives.
- (2) Subsection (1) is subject to subsection (3) and sections 405 to 413 (exceptions for certain payments and benefits).
- (3) This Chapter does not apply to any payment or other benefit chargeable to income tax apart from this Chapter.
- (4) For the purposes of this Chapter—
  - (a) a payment or other benefit which is provided on behalf of, or to the order of, the employee or former employee is treated as received by the employee or former employee, and
  - (b) in relation to a payment or other benefit—
    - (i) any reference to the employee or former employee is to the person mentioned in subsection (1), and
    - (ii) any reference to the employer or former employer is to be read accordingly.

#### **402 Meaning of “benefit”**

- (1) In this Chapter “benefit” includes anything in respect of which, were it received for performance of the duties of the employment, an amount—
  - (a) would be taxable earnings from the employment, or
  - (b) would be such earnings apart from an earnings-only exemption.

This is subject to subsections (2) to (4).

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- (2) In this Chapter “benefit” does not include a benefit received in connection with the termination of a person’s employment that is a benefit which, were it received for performance of the duties of the employment, would fall within—
- (a) section 239(4) (exemption of benefits connected with taxable cars and vans and exempt heavy goods vehicles), so far as that section applies to a benefit connected with a car or van,
  - (b) section 269 (exemption where benefits or money obtained in connection with taxable car or van or exempt heavy goods vehicle),
  - (c) section 319 (mobile telephones), or
  - (d) section 320 (limited exemption for computer equipment).
- (3) In this Chapter “benefit” does not include a benefit received in connection with any change in the duties of, or earnings from, a person’s employment to the extent that it is a benefit which, were it received for performance of the duties of the employment, would fall within section 271(1) (limited exemption of removal benefits and expenses).
- (4) The right to receive a payment or benefit is not itself a benefit for the purposes of this Chapter.

*Payments and benefits treated as employment income*

**403 Charge on payment or other benefit**

- (1) The amount of a payment or benefit to which this Chapter applies counts as employment income of the employee or former employee for the relevant tax year if and to the extent that it exceeds the £30,000 threshold.
- (2) In this section “the relevant tax year” means the tax year in which the payment or other benefit is received.
- (3) For the purposes of this Chapter—
- (a) a cash benefit is treated as received—
    - (i) when it is paid or a payment is made on account of it, or
    - (ii) when the recipient becomes entitled to require payment of or on account of it, and
  - (b) a non-cash benefit is treated as received when it is used or enjoyed.
- (4) For the purposes of this Chapter the amount of a payment or benefit in respect of an employee or former employee exceeds the £30,000 threshold if and to the extent that, when it is aggregated with other such payments or benefits to which this Chapter applies, it exceeds £30,000 according to the rules in section 404 (how the £30,000 threshold applies).
- (5) If it is received after the death of the employee or former employee—
- (a) the amount of a payment or benefit to which this Chapter applies counts as the employment income of the personal representatives for the relevant year if or to the extent that it exceeds £30,000 according to the rules in section 404, and
  - (b) the tax is accordingly to be assessed and charged on them and is a debt due from and payable out of the estate.

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- (6) In this Chapter references to the taxable person are to the person in relation to whom subsection (1) or (5) provides for an amount to count as employment income.

#### **404 How the £30,000 threshold applies**

- (1) For the purpose of the £30,000 threshold in section 403(4) and (5), the payments and other benefits provided in respect of an employee or former employee which are to be aggregated are those provided—
- in respect of the same employment,
  - in respect of different employments with the same employer, and
  - in respect of employments with employers who are associated.
- (2) For this purpose employers are “associated” if on a termination or change date—
- one of them is under the control of the other, or
  - one of them is under the control of a third person who on that termination or change date or another such date controls or is under the control of the other.
- (3) In subsection (2)—
- references to an employer, or to a person controlling or controlled by an employer, include the successors of the employer or person, and
  - “termination or change date” means a date on which a termination or change occurs in connection with which a payment or other benefit to which this Chapter applies is received in respect of the employee or former employee.
- (4) If payments and other benefits are received in different tax years, the £30,000 is set against the amount of payments and other benefits received in earlier years before those received in later years.
- (5) If more than one payment or other benefit is received in a tax year in which the threshold is exceeded—
- the £30,000 (or the balance of it) is set against the amounts of cash benefits as they are received, and
  - any balance at the end of the year is set against the aggregate amount of non-cash benefits received in the year.

#### *Exceptions and reductions*

#### **405 Exception for certain payments exempted when received as earnings**

- (1) This Chapter does not apply to any payment received in connection with the termination of a person’s employment which, were it received for the performance of the duties of the employment, would fall within section 308 (exemption of contributions to approved personal pension arrangements).
- (2) This Chapter does not apply to any payment received in connection with any change in the duties of, or earnings from, a person’s employment to the extent that, were it received for the performance of the duties of the employment, it would fall within section 271(1) (limited exemption of removal benefits and expenses).

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#### **406 Exception for death or disability payments and benefits**

This Chapter does not apply to a payment or other benefit provided—

- (a) in connection with the termination of employment by the death of an employee, or
- (b) on account of injury to, or disability of, an employee.

#### **407 Exception for payments and benefits under tax-exempt pension schemes**

(1) This Chapter does not apply to a payment or other benefit provided under a tax-exempt pension scheme if—

- (a) the payment or other benefit is by way of compensation—
  - (i) for loss of employment, or
  - (ii) for loss or diminution of earnings, and the loss or diminution is due to ill-health, or
- (b) the payment or other benefit is properly regarded as earned by past service.

(2) For this purpose “tax-exempt pension scheme” means—

- (a) a retirement benefits scheme which is—
  - (i) an approved scheme,
  - (ii) a relevant statutory scheme, or
  - (iii) a scheme set up by a government outside the United Kingdom for the benefit of its employees or primarily for their benefit, or
- (b) any such scheme or fund as was described in section 221(1) and (2) of ICTA 1970 (schemes to which payments could be made without charge to tax under section 220 of ICTA 1970).

(3) In this section—

- “approved scheme” has the meaning given by section 612(1) of ICTA,
- “relevant statutory scheme” has the meaning given by section 611A of ICTA,
- and
- “retirement benefits scheme” has the meaning given by section 611 of ICTA.

#### **408 Exception for contributions to tax-exempt pension schemes**

(1) This Chapter does not apply to a contribution to a tax-exempt pension scheme or approved personal pension arrangements if the contribution is made—

- (a) as part of an arrangement relating to the termination of a person’s employment, and
- (b) in order to provide benefits for the person in accordance with the terms of the scheme or approved personal pension arrangements.

(2) For this purpose—

- “tax-exempt pension scheme” has the same meaning as in section 407(2), and
- “approved” and “personal pension arrangements” have the meaning given by section 630(1) of ICTA.

*Status: Point in time view as at 07/04/2005.*

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#### **409 Exception for payments and benefits in respect of employee liabilities and indemnity insurance**

- (1) This Chapter does not apply to a payment or other benefit received by an individual if or to the extent that—
  - (a) in the case of a cash benefit, it is provided for meeting the cost of a deductible amount, or
  - (b) in the case of a non-cash benefit, it is or represents a benefit equivalent to the cost of paying a deductible amount.
- (2) For the purposes of this section “deductible amount” means an amount which meets conditions A to C.
- (3) Condition A is that the amount is paid by the individual.
- (4) Condition B is that a deduction for the amount would have been allowed under section 346 from earnings from the relevant employment, if the individual still held the employment when the amount was paid.
- (5) Condition C is that the amount is paid at a time which falls within the run-off period.
- (6) In this section and section 410—
  - “relevant employment” means the employment mentioned in section 401(1);
  - “run-off period” means the period which—
    - (a) starts with the day on which the relevant employment terminated, and
    - (b) ends with the last day of the sixth tax year following the tax year in which the period started.

#### **410 Exception for payments and benefits in respect of employee liabilities and indemnity insurance: individual deceased**

- (1) This Chapter does not apply to a payment or other benefit received by an individual’s personal representatives if or to the extent that—
  - (a) in the case of a cash benefit, it is provided for meeting the cost of a deductible amount, or
  - (b) in the case of a non-cash benefit, it is or represents a benefit equivalent to the cost of paying a deductible amount.
- (2) For the purposes of this section “deductible amount” means an amount which meets conditions A to C.
- (3) Condition A is that the amount is paid by the individual’s personal representatives.
- (4) Condition B is that a deduction for the amount would have been allowed under section 346 from earnings from the relevant employment, if—
  - (a) the individual had not died,
  - (b) the amount had been paid by the individual, and
  - (c) the individual still held the employment when the amount was paid.
- (5) Condition C is that the amount is paid at a time which falls within the run-off period.

#### **411 Exception for payments and benefits for forces**

This Chapter does not apply to a payment or other benefit provided—

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- (a) under a Royal Warrant, Queen’s Order or Order in Council relating to members of Her Majesty’s forces, or
- (b) by way of payment in commutation of annual or other periodical payments authorised by any such Warrant or Order.

#### **412 Exception for payments and benefits provided by foreign governments etc.**

- (1) This Chapter does not apply to—
  - (a) a benefit provided under a pension scheme administered by the government of an overseas territory within the Commonwealth, or
  - (b) a payment of compensation for loss of career, interruption of service or disturbance made—
    - (i) in connection with any change in the constitution of any such overseas territory, and
    - (ii) to a person who was employed in the public service of the territory before the change.
- (2) References in subsection (1) to—
  - (a) an overseas territory,
  - (b) the government of such a territory, and
  - (c) employment in the public service of such a territory,
 have the meanings given in section 615 of ICTA.

#### **413 Exception in certain cases of foreign service**

- (1) This Chapter does not apply if the service of the employee or former employee in the employment in respect of which the payment or other benefit is received included foreign service comprising—
  - (a) three-quarters or more of the whole period of service ending with the date of the termination or change in question, or
  - (b) if the period of service ending with that date exceeded 10 years, the whole of the last 10 years, or
  - (c) if the period of service ending with that date exceeded 20 years, one-half or more of that period, including any 10 of the last 20 years.
- (2) In subsection (1) “foreign service” means service to which subsection (3), (4) or (6) applies.
- (3) This subsection applies to service in or after the tax year 2003-04 such that—
  - (a) the earnings from the employment were not general earnings to which section 15 or 21 applies (earnings for year when employee resident and ordinarily resident in UK), or would not have been had there been any, or
  - (b) a deduction equal to the whole amount of the earnings from the employment was or would have been allowable under Chapter 6 of Part 5 (deductions from seafarers’ earnings).
- (4) This subsection applies to service before the tax year 2003-04 and after the tax year 1973-74 such that—
  - (a) the emoluments from the employment were not chargeable under Case I of Schedule E, or would not have been so chargeable had there been any, or



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- (b) a deduction equal to the whole amount of the emoluments from the employment was or would have been allowable under a foreign earnings deduction provision.
- (5) In subsection (4) “foreign earnings deduction provision” means—
  - (a) paragraph 1 of Schedule 2 to FA 1974,
  - (b) paragraph 1 of Schedule 7 to FA 1977, or
  - (c) section 192A or 193(1) of ICTA.
- (6) This subsection applies to service before the tax year 1974-75 such that tax was not chargeable in respect of the emoluments of the employment—
  - (a) in the tax year 1956-57 or later, under Case I of Schedule E, or
  - (b) in earlier tax years, under Schedule E,or it would not have been so chargeable had there been any such emoluments.

#### **414 Reduction in other cases of foreign service**

- (1) This section applies if—
  - (a) the service of the employee or former employee in the employment in respect of which the payment or other benefit is received includes foreign service, and
  - (b) section 413 (exception in certain cases of foreign service) does not apply.
- (2) The taxable person may claim relief in the form of a proportionate reduction of the amount that would otherwise count as employment income under this Chapter.
- (3) The proportion is that which the length of the foreign service bears to the whole length of service in the employment before the date of the termination or change in question.
- (4) A person’s entitlement to relief under this section is limited as mentioned in subsection (5) if the person is entitled—
  - (a) to deduct, retain or satisfy income tax out of a payment which the person is liable to make, or
  - (b) to charge any income tax against another person.
- (5) The relief must not reduce the amount of income tax for which the person is liable below the amount the person is entitled so to deduct, retain, satisfy or charge.
- (6) In this section “foreign service” has the same meaning as in section 413(2).

#### *General and supplementary provisions*

#### **415 Valuation of benefits**

- (1) In the case of a cash benefit, for the purposes of this Chapter the amount of a payment or other benefit is taken to be the amount received.
- (2) In the case of a non-cash benefit, for the purposes of this Chapter the amount of a payment or other benefit is taken to be the greater of—
  - (a) the amount of earnings (as defined in Chapter 1 of Part 3) that the benefit would give rise to if it were received by an employee within section 15 for performance of the duties of an employment (money’s worth), and

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- (b) the cash equivalent of the benefit under the benefits code if it were so received and the code applied to it.
- (3) For the purposes of subsection (2), the benefits code has effect with the modifications in subsections (4), (6) and (7).
- (4) References in the benefits code to the employee are to be taken as references to the taxable person and any other person by whom the benefit is received.
- (5) For the purposes of subsection (4), section 401(4)(a) is to be disregarded.
- (6) References in the benefits code to the employer are to be taken as including references to the former employer.
- (7) Where—
  - (a) section 106 (cash equivalent: cost of accommodation over £75,000) applies, and
  - (b) the sum referred to in section 105(2)(b) (the sum made good) exceeds the amount referred to in section 105(2)(a) (the rental value),
 the amount to be subtracted under paragraph (b) of step 4 of the calculation in section 106(2) is that excess (and not only the excess rent referred to there).

#### **416 Notional interest treated as paid if amount charged for beneficial loan**

- (1) This section applies if an amount (“the taxable amount”) consisting of, or including, an amount representing the benefit of a loan counts as a person’s employment income in a tax year under section 403.
- (2) That person is to be treated for the purposes of the Tax Acts (other than this Chapter) as having paid interest on the loan in the tax year equal to the lesser of—
  - (a) the amount representing the cash equivalent of the loan, and
  - (b) the taxable amount.
- (3) The interest is to be treated—
  - (a) as accruing during the period in the tax year during which the loan is outstanding, and
  - (b) as paid at the end of the period.
- (4) The interest is not to be treated—
  - (a) as income of the person making the loan, or
  - (b) as relevant loan interest to which section 369 of ICTA applies (mortgage interest payable under deduction of tax).

### **PART 7**

[<sup>F111</sup>EMPLOYMENT INCOME: INCOME AND EXEMPTIONS RELATING TO SECURITIES]

#### **Textual Amendments**

**F111** Pt. 7 heading substituted (with effect in accordance with Sch. 22 para. 2(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 2\(1\)](#)

*Status: Point in time view as at 07/04/2005.*

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**Modifications etc. (not altering text)**

C6 Pt. 7: power to modify conferred (7.4.2005) by [Finance Act 2005 \(c. 7\), s. 21\(8\)-\(10\)](#)

[<sup>F112</sup>CHAPTER 1

INTRODUCTION

**Textual Amendments**

**F112** Pt. 7 Ch. 1 substituted (with effect in accordance with Sch. 22 para. 2(2) of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 2\(1\)](#)

*General*

**417 Scope of Part 7**

- (1) This Part contains special rules about cases where securities, interests in securities or securities options are acquired in connection with an employment.
- (2) The rules are contained in—
  - Chapter 2 (restricted securities),
  - Chapter 3 (convertible securities),
  - Chapter 3A (securities with artificially depressed market value),
  - Chapter 3B (securities with artificially enhanced market value),
  - Chapter 3C (securities acquired for less than market value),
  - Chapter 3D (securities disposed of for more than market value),
  - Chapter 4 (post-acquisition benefits from securities),
  - Chapter 5 (securities options),
  - Chapter 6 (approved share incentive plans),
  - Chapter 7 (approved SAYE option schemes),
  - Chapter 8 (approved CSOP schemes),
  - Chapter 9 (enterprise management incentives), and
  - Chapter 10 (priority share allocations).
- (3) The following make provision for amounts to count as employment income—
  - Chapters 2 to 6, and
  - Chapter 8.
- (4) The following make provision for exemptions and reliefs from income tax—
  - Chapters 2 and 3, and
  - Chapters 5 to 10.
- (5) Chapter 11 contains supplementary provisions relating to employee benefit trusts.
- (6) Section 5(1) (application of employment income Parts to office-holders generally) does not apply to Chapters 6 to 10; and section 549(5) makes provision about its application to Chapter 11.

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## 418 Other related provisions

- (1) In Part 3—  
 Chapter 1 (earnings), and  
 Chapter 10 (taxable benefits: residual liability to charge),  
 may also have effect in relation to securities and interests in securities (but not securities options).
- (2) Part 7 of Schedule 7 (transitional provisions relating to securities and securities options) may also be relevant.
- (3) In view of section 49 of FA 2000 (phasing out of APS schemes) the following are not rewritten in this Act and continue in force unaffected by the repeals made by this Act—  
 section 186 of ICTA (APS schemes) and section 187 of that Act (interpretation) so far as relating to APS schemes, and  
 Schedule 9 to ICTA (approval of share schemes) so far as relating to APS schemes and Schedule 10 to that Act (further provisions about APS schemes).  
 “APS schemes” means profit sharing schemes approved under Schedule 9 to ICTA.
- (4) Sections 138 to 140 of ICTA (share acquisitions by directors and employees) continue to apply in relation to shares or interests in shares acquired before 26th October 1987 (see paragraph 57 of Schedule 7).

## 419 Negative amounts treated as nil

If the result given by any formula under any provision of this Part would otherwise be a negative amount, the result is to be taken to be nil instead.

### *Interpretation of Chapters 1 to 5*

## 420 Meaning of “securities” etc

- (1) Subject to subsections (5) and (6), for the purposes of this Chapter and Chapters 2 to 5 the following are “securities”—
- (a) shares in any body corporate (wherever incorporated) or in any unincorporated body constituted under the law of a country or territory outside the United Kingdom,
  - <sup>[F113]</sup>(aa) rights under contracts of insurance other than excluded contracts of insurance,
  - (b) debentures, debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness, <sup>[F114]</sup>(other than contracts of insurance)]
  - (c) warrants and other instruments entitling their holders to subscribe for securities (whether or not in existence or identifiable),
  - (d) certificates and other instruments conferring rights in respect of securities held by persons other than the persons on whom the rights are conferred and the transfer of which may be effected without the consent of those persons,
  - (e) units in a collective investment scheme,
  - (f) futures, and

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- (g) rights under contracts for differences or contracts similar to contracts for differences [<sup>F115</sup>(other than contracts of insurance)] .
- [<sup>F116</sup>(1A) For the purposes of subsection (1)(aa) a contract of insurance is an excluded contract of insurance if it is—
- (a) a contract for an annuity which is (or will be) pension income (see Part 9),
  - (b) a contract of long-term insurance, other than an annuity contract, which does not have a surrender value and is not capable of acquiring one (whether on conversion or in any other circumstances), or
  - (c) a contract of general insurance other than one which falls, in accordance with generally accepted accounting practice, to be accounted for as a financial asset or liability.
- (1B) In this section—
- “contract of insurance”,
  - “contract of long-term insurance”, and
  - “contract of general insurance”,
- have the same meaning as in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.]
- (2) In subsection (1)(e) “collective investment scheme” means arrangements—
- (a) which are made with respect to property of any description, including money, and
  - (b) the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.
- (3) In subsection (1)(f) “futures” means rights under a contract for the sale of a commodity or other property under which delivery is to be made at a future date at a price agreed when the contract is made; and for this purpose a price is to be taken to be agreed when the contract is made—
- (a) if it is left to be determined by reference to the price at which a contract is to be entered into on a market or exchange or could be entered into at a time and place specified in the contract, and
  - (b) in a case where the contract is expressed to be by reference to a standard lot and quality, even if provision is made for a variation in the price to take account of any variation in quantity or quality on delivery.
- (4) For the purposes of subsection (1)(g) a contract similar to a contract for differences is a contract—
- (a) which is not a contract for differences, but
  - (b) the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property or an index or other factor designated in the contract.
- (5) The following are not “securities” for the purposes of this Chapter or Chapters 2 to 5—
- (a) cheques and other bills of exchange, bankers' drafts and letters of credit (other than bills of exchange accepted by a banker),
  - (b) money and statements showing balances on a current, deposit or savings account,

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- (c) leases and other dispositions of property and heritable securities, [<sup>F117</sup>and]  
<sup>F118</sup>(d) .....
- (e) options.
- (6) The Treasury may by order amend subsections (1) to (5).
- (7) An order under subsection (6) may include any appropriate consequential provision (including provision amending any enactment).
- (8) In this Chapter and Chapters 2 to 5—  
     “interest”, in relation to securities (or shares), means an interest in them less than full beneficial ownership and includes an interest in proceeds of their sale, but does not include a right to acquire them,  
     “securities option” means a right to acquire securities, and  
     “shares” includes stock.

#### Textual Amendments

- F113** S. 420(1)(aa) inserted (with effect in accordance with Sch. 2 para. 2(8) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 2 para. 2(2)**
- F114** Words in s. 420(1)(b) inserted (with effect in accordance with Sch. 2 para. 2(8) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 2 para. 2(3)**
- F115** Words in s. 420(1)(g) inserted (with effect in accordance with Sch. 2 para. 2(8) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 2 para. 2(4)**
- F116** S. 420(1A)(1B) inserted (with effect in accordance with Sch. 2 para. 2(8) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 2 para. 2(5)**
- F117** Word in s. 420(5)(c) inserted (with effect in accordance with Sch. 2 para. 2(8) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 2 para. 2(6)(a)**
- F118** S. 420(5)(d) repealed (with effect in accordance with Sch. 2 para. 2(8) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), Sch. 2 para. 2(6)(b), **Sch. 11 Pt. 2(1)**

#### 421 Meaning of “market value” etc

- (1) In this Chapter and Chapters 2 to 5 “market value” has the same meaning as it has for the purposes of TCGA 1992 by virtue of Part 8 of that Act.
- (2) Where consideration for anything is given in the form of an asset (as opposed to a payment), any reference in this Chapter or any of Chapters 2 to 5 to the amount of the consideration is to the market value of the asset.

#### 421A Meaning of “consideration”

- (1) This section applies for determining for the purposes of Chapters 2 to 5 the amount of the consideration given for anything.
- (2) If any consideration is given partly in respect of one thing and partly in respect of another, the amount given in respect of the different things is to be determined on a just and reasonable apportionment.
- (3) The consideration which is taken to be given wholly or partly for anything does not include the performance of any duties of, or in connection with, an employment.

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- (4) No amount is to be counted more than once in calculating the amount of any consideration.

### *Application of Chapters 2 to [F119 4A]*

#### **Textual Amendments**

**F119** Word in s. 421B cross-heading substituted (with effect in accordance with s. 20(5) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 20\(3\)\(b\)](#)

#### **421B Application of Chapters 2 to [F120 4A]**

- (1) Subject as follows (and to any provision contained in Chapters 2 to [F121 4A] ) those Chapters apply to securities, or an interest in securities, acquired by a person where the right or opportunity to acquire the securities or interest is available by reason of an employment of that person or any other person.
- (2) For the purposes of subsection (1)—
- (a) securities are, or an interest in securities is, acquired at the time when the person acquiring the securities or interest becomes beneficially entitled to those securities or that interest (and not, if different, the time when the securities are, or interest is, conveyed or transferred), and
  - (b) “employment” includes a former or prospective employment.
- (3) A right or opportunity to acquire securities or an interest in securities made available by a person’s employer, or by a person connected with a person’s employer, is to be regarded for the purposes of subsection (1) as available by reason of an employment of that person unless—
- (a) the person by whom the right or opportunity is made available is an individual, and
  - (b) the right or opportunity is made available in the normal course of the domestic, family or personal relationships of that person.
- (4) Chapters 2 to [F122 4A] cease to apply to securities, or an interest in securities, when subsection (5), (6) or (7) is satisfied.
- (5) This subsection is satisfied immediately after the securities are, or the interest in securities is, disposed of otherwise than to an associated person.
- (6) This subsection is satisfied immediately before the death of the employee.
- (7) This subsection is satisfied 7 years after the first date after the acquisition on which the employee is an employee of none of the following—
- (a) the employer,
  - (b) (if the securities are, or the interest in securities is an interest in, securities issued by a company) the company by which they are issued, or
  - (c) a person connected with a person within paragraph (a) or (b).
- (8) In this Chapter and Chapters 2 to [F123 4A] —
- “the acquisition”, in relation to employment-related securities, means the acquisition of the employment-related securities pursuant to the right or opportunity available by reason of the employment,

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“the employment”, in relation to employment-related securities, means the employment by reason of which the right or opportunity to acquire the employment-related securities is available (“the employee” and “the employer” being construed accordingly unless otherwise indicated), and

“employment-related securities” means securities or an interest in securities to which Chapters 2 to 4 apply (ignoring any provision of any of those Chapters which limits the application of the Chapter to a particular description or descriptions of employment-related securities).

#### Textual Amendments

- F120** Word in s. 421B heading substituted (with effect in accordance with s. 20(5) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 20\(3\)\(b\)](#)
- F121** Word in s. 421B(1) substituted (with effect in accordance with s. 20(5) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 20\(3\)\(a\)](#)
- F122** Word in s. 421B(4) substituted (with effect in accordance with s. 20(5) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 20\(3\)\(a\)](#)
- F123** Word in s. 421B(8) substituted (with effect in accordance with s. 20(5) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 20\(3\)\(a\)](#)

#### 421C Associated persons

- (1) For the purposes of this Chapter and Chapters 2 to 4 the following are “associated persons” in relation to employment-related securities—
- (a) the person who acquired the employment-related securities on the acquisition,
  - (b) (if different) the employee, and
  - (c) any relevant linked person.
- (2) A person is a relevant linked person if—
- (a) that person (on the one hand), and
  - (b) either the person who acquired the employment-related securities on the acquisition or the employee (on the other),
- [<sup>F124</sup>are or have been connected or (without being or having been connected) are or have been] members of the same household.
- (3) But a company which would otherwise be a relevant linked person is not if it is—
- (a) the employer,
  - (b) the person from whom the employment-related securities were acquired,
  - (c) the person by whom the right or opportunity to acquire the employment-related securities was made available, or
  - (d) the person by whom the employment-related securities (or the securities in which they are an interest) were issued.

#### Textual Amendments

- F124** Words in s. 421C(2) substituted (18.6.2004 with application in accordance with s. 90(5) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 90\(2\)](#)



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#### **421D Replacement and additional securities and changes in interests**

- (1) Subsections (2) and (3) apply where an associated person is entitled to employment-related securities (the “original securities”) and either—
  - (a) as a result of the conversion of the original securities (or the securities in which they are an interest), or of any other transaction or series of transactions, that person ceases to be entitled to the original securities but that person or another associated person acquires securities or an interest in securities (the “replacement securities”), or
  - (b) by virtue of that person being entitled to the original securities, that person or another associated person acquires other securities or an interest in other securities (the “additional securities”).
- (2) The replacement securities or the additional securities are to be regarded for the purposes of section 421B(1) (securities acquired pursuant to a right or opportunity available by reason of an employment) as acquired pursuant to the same right or opportunity as the original securities.
- (3) Where the market value of the original securities is reduced by reason of the issue of, or of securities including, the replacement securities or the additional securities (or the securities in which they are an interest), the amount of that reduction is to be treated for the purposes of Chapters 2 and 3 as consideration or additional consideration given for the acquisition of the replacement securities or the additional securities.
- (4) Subsections (2) and (3) apply whether or not the replacement securities, or the additional securities, were acquired for consideration.
- (5) Where Chapters 2 to [F<sup>125</sup>4A] apply to an interest in securities, an increase of that interest is to be treated for the purposes of section 421B(1) (securities acquired pursuant to a right or opportunity available by reason of an employment) as a separate interest acquired pursuant to the same right or opportunity as the original interest.
- (6) Where Chapters 2 to [F<sup>126</sup>4A] apply to an interest in securities, a reduction of that interest (otherwise than by a disposal to an associated person) is to be treated for the purposes of those Chapters as the disposal otherwise than to an associated person of a separate interest proportionate to the reduction.

#### **Textual Amendments**

**F125** Word in s. 421D(5) substituted (with effect in accordance with s. 20(5) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 20\(3\)\(c\)](#)

**F126** Word in s. 421D(6) substituted (with effect in accordance with s. 20(5) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 20\(3\)\(c\)](#)

#### **421E Exclusions: residence etc**

- (1) Chapters 2, 3 and 4 do not apply in relation to employment-related securities if, at the time of the acquisition, the earnings from the employment 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) Chapters 3A to 3D do not apply in relation to employment-related securities if, at the time of the acquisition, the earnings from the employment were not (or would not have

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been if there had been any) general earnings to which any of the charging provisions of Chapter 4 or 5 of Part 2 apply.

- (3) Chapters 2 to 4 do not apply in the case of a former employment if they would not apply if the acquisition had taken place in the last tax year in which the employment was held.
- (4) Chapters 2 to 4 do not apply in the case of a prospective employment if they would not apply if the acquisition had taken place in the first tax year in which the employment is held.
- (5) Where the employment-related securities are replacement securities or additional securities (within the meaning of section 421D), the references in this section to the acquisition are to the acquisition of the original securities (within the meaning of that section).

#### **421F Exclusions: public offers**

- (1) [<sup>F127</sup>Chapters 2, 3 and 3C] do not apply in relation to employment-related securities that are shares acquired under the terms of an offer to the public or an interest in shares so acquired.
- [<sup>F128</sup>(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.]
- (2) In a case within subsection (1) of section 544 (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 subsection is to be treated for the purposes of this section as made under the terms of an offer to the public.
- (3) Subsection (2) applies whether or not there is any benefit within section 544(2) (benefit derived from entitlement to priority allocation exempt from income tax).

#### **Textual Amendments**

- F127** Words in s. 421F(1) substituted (18.6.2004 with application in accordance with s. 89(4)(5) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 89\(2\)](#)
- F128** S. 421F(1A) inserted (18.6.2004 with application in accordance with s. 89(4)(5) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 89\(3\)](#)

#### <sup>F129</sup>**421G Exclusions: approved plan or scheme securities**

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### Textual Amendments

**F129** S. 421G repealed (18.6.2004 with effect in accordance with s. 88(11)-(13) of the amending Act) by Finance Act 2004 (c. 12), s. 88(2), **Sch. 42 Pt. 2(11)**

## 421H Meaning of “employee-controlled” etc

- (1) For the purposes of Chapters 2 to 4 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 of the company or a company controlled by the company, and
  - (b) those employees are together able as holders of the shares to control the company.

In this subsection “employee” includes a person who is to be or has been an employee.

- (2) In this section and Chapters 2 to 4 “associated company” has the same meaning as, by virtue of section 416 of ICTA, it has for the purposes of Part 11 of ICTA.

## 421I Consideration for acquisition of employment-related securities

- (1) This section applies for determining for the purposes of Chapters 2 to 3A the amount of the consideration given for the acquisition of employment-related securities.
- (2) References to consideration given for the acquisition of the employment-related securities are to consideration given by—
  - (a) the employee, or
  - (b) (if not the employee) the person by whom the employment-related securities were acquired.
- (3) The amount of the consideration given by a person for the acquisition of the employment-related securities includes the amount of any consideration given for a right to acquire the employment-related securities.
- (4) If the right to acquire the employment-related securities (“the new option”) is the whole or part of the consideration for the assignment or release of another right to acquire them (“the old option”), the amount of the consideration given for the new option is to be treated as being the sum of—
  - (a) the amount by which the amount of the consideration given for the old option exceeds the amount of any consideration for the assignment or release of the old option, apart from the new option, and
  - (b) any valuable consideration given for the new option, apart from the old option.
- (5) Two or more transactions are to be treated for the purposes of subsection (4) as a single transaction by which a right to acquire the employment-related securities is assigned for a consideration which consists of or includes another right to acquire the employment-related securities if—
  - (a) the transactions result in a person ceasing to hold a right to acquire the employment-related securities and that person or a connected person coming to hold another right to acquire them, and

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- (b) one or more of the transactions is effected under arrangements to which two or more persons who hold rights to acquire the employment-related securities, in respect of which there may be a liability to tax under Chapter 5 of this Part (securities options), are parties.
- (6) Subsection (5) applies regardless of the order in which the assignment and the acquisition occur.
- (7) In this section “release”, in relation to a right to acquire the employment-related securities, includes agreeing to the restriction of the exercise of the right.

### *Information*

#### **421J Duty to provide information**

- (1) This section applies in relation to reportable events.
- (2) Section 421K explains what are reportable events for the purposes of this section.
- (3) Each person who is a responsible person in relation to a reportable event must provide the Inland Revenue with particulars in writing of the reportable event before 7th July in the tax year following that in which the reportable event takes place.
- (4) The Inland Revenue may by notice require any person to provide them with such particulars of any reportable events—
  - (a) which take place in a period specified in the notice, and
  - (b) in relation to which that person is a responsible person,
 as are required by the notice or, if no reportable event in relation to which that person is a responsible person has taken place in that period, to state that fact.
- (5) A notice under subsection (4) must specify a date by which it must be complied with.
- (6) That date must not be less than 30 days after the date when the notice is given.
- (7) Once one person complies with the duty imposed by subsection (3) in relation to a reportable event, that subsection ceases to impose a duty on any other person in relation to the reportable event.
- (8) Once a person complies with the duty imposed by a notice under subsection (4) by providing the required particulars of a reportable event, subsection (3) ceases to impose a duty on that person or any other person in relation to that reportable event.
- (9) Section 421L explains who are the responsible persons in relation to a reportable event.
- (10) The particulars required by, or by a notice under, this section must be provided in a form specified by the Board of Inland Revenue.
- (11) A person need not provide particulars required by, or by a notice under, this section if they have been given in a notice under paragraph 44 of Schedule 5 (enterprise management incentives: notice of option to be given to Inland Revenue).

In other respects the obligations imposed by, or by a notice under, this section and by that paragraph are independent of each other.

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- (12) Paragraph 52 of that Schedule contains a duty to deliver annual returns where a company's shares are subject to a qualifying option within the meaning of that Schedule.

#### **421K Reportable events**

- (1) This section applies for the purposes of section 421J (duty to provide information).
- (2) Each of the events mentioned in subsection (3) is a reportable event.
- (3) The events are—
- (a) an acquisition (or an event treated as an acquisition) of securities, an interest in securities or a securities option pursuant to a right or opportunity available by reason of the employment of the person who acquires the securities, interest in securities or securities option or of any other person,
  - (b) an event which is a chargeable event in relation to securities, or an interest in securities, for the purposes of section 426 (chargeable events in relation to restricted securities and restricted interests in securities),
  - (c) an event which is a chargeable event in relation to securities, or an interest in securities, for the purposes of section 438 (chargeable events in relation to convertible securities and interests in convertible securities),
  - (d) the doing of anything which gives rise to a taxable amount counting as employment income under section 446L (artificial enhancement of market value of securities),
  - (e) an event which discharges a notional loan relating to securities, or an interest in securities, under section 446U (securities and interests in securities acquired for less than market value),
  - (f) a disposal of securities, or an interest in securities, by virtue of which Chapter 3D of this Part applies (securities and interests in securities disposed of for more than market value),
  - (g) the receipt of a benefit which gives rise to a taxable amount counting as employment income under section 447 (charge on benefit from securities or interest in securities) [<sup>F130</sup>or would give rise to such an amount but for Chapter 4A (shares in research institution spin-out companies)],
  - (h) the assignment or release of a securities option acquired pursuant to a right or opportunity available by reason of the employment of the person who acquires the securities option or any other person, and
  - (i) the receipt of a benefit in money or money's worth which is (or by virtue of section 477(6) is to be regarded as being) received in connection with such a securities option.

#### **Textual Amendments**

**F130** Words in s. 421K(3)(g) inserted (with effect in accordance with s. 20(5) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 20\(4\)](#)

#### **421L Persons to whom section 421J applies**

- (1) This section applies for the purposes of section 421J (duty to provide information).

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- (2) Each of the following persons is a responsible person in relation to a reportable event.
- (3) The persons are—
- (a) the employer in question,
  - (b) any host employer of the employee in question,
  - (c) the person from whom the securities in question were, or interest or option in question was, acquired, and
  - (d) in relation to a reportable event concerning securities or an interest in securities which are not excluded securities, the person by whom the securities were issued.
- (4) In subsection (3)(b) “host employer” means a person other than the employer in question—
- (a) for whom the employee in question works at the time of the reportable event, and
  - (b) who would, by virtue of subsection (2) of section 689 (employees of non-UK employers working for a person other than the employer), be treated for the purposes of PAYE regulations as making a payment of PAYE income of the employee in question if a payment to which subsection (5) would apply were made by the employer in question in respect of the period during which the employee works for the other person.
- (5) For the purposes of subsection (4)(b) this subsection would apply to a payment if—
- (a) it were a payment of PAYE income of the employee, and
  - (b) the conditions in subsection (1)(c) and (d) of section 689 were satisfied in relation to the payment.
- (6) For the purposes of subsection (3)(d) securities are excluded securities in relation to a reportable event if they are—
- (a) loan stock, bonds or other instruments creating or acknowledging indebtedness issued by or on behalf of any national or regional government or local authority (in the United Kingdom or elsewhere) or any body whose members consists of states, national or regional governments or local authorities, or
  - (b) securities which are issued by a person who, at the time of the reportable event, is not connected with the employer in question and which are listed or dealt in on a recognised stock exchange.]

## [<sup>F131</sup>CHAPTER 2

### RESTRICTED SECURITIES

#### Textual Amendments

**F131** Pt. 7 Ch. 2 substituted (1.9.2003 with effect in accordance with Sch. 22 para. 3(2)-(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 3\(1\)](#); S.I. 2003/1997, art. 2

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## Introduction

### 422 Application of this Chapter

This Chapter applies to employment-related securities if they are—

- (a) restricted securities, or
- (b) a restricted interest in securities,

at the time of the acquisition.

#### Modifications etc. (not altering text)

- C7 S. 422 modified (with application in accordance with Sch. 2 para. 4(4) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), Sch. 2 para. 4(4)

### 423 “Restricted securities” and “restricted interest in securities”

- (1) For the purposes of this Chapter employment-related securities are restricted securities or a restricted interest in securities if—
  - (a) there is any contract, agreement, arrangement or condition which makes provision to which any of subsections (2) to (4) applies, and
  - (b) the market value of the employment-related securities is less than it would be but for that provision.
- (2) This subsection applies to provision under which—
  - (a) there will be a transfer, reversion or forfeiture of the employment-related securities, or (if the employment-related securities are an interest in securities) of the interest or the securities, if certain circumstances arise or do not arise,
  - (b) as a result of the transfer, reversion or forfeiture the person by whom the employment-related securities are held will cease to be beneficially entitled to the employment-related securities, and
  - (c) that person will not be entitled on the transfer, reversion or forfeiture to receive in respect of the employment-related securities an amount of at least their market value (determined as if there were no provision for transfer, reversion or forfeiture) at the time of the transfer, reversion or forfeiture.
- (3) This subsection applies to provision under which there is a restriction on—
  - (a) the freedom of the person by whom the employment-related securities are held to dispose of the employment-related securities or proceeds of their sale,
  - (b) the right of that person to retain the employment-related securities or proceeds of their sale, or
  - (c) any other right conferred by the employment-related securities,  
(not being provision to which subsection (2) applies).
- (4) This subsection applies to provision under which the disposal or retention of the employment-related securities, or the exercise of a right conferred by the employment-related securities, may result in a disadvantage to—
  - (a) the person by whom the employment-related securities are held,
  - (b) the employee (if not the person by whom they are held), or
  - (c) any person connected with the person by whom they are held or with the employee,

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(not being provision to which subsection (2) or (3) applies).

#### **424 Exceptions**

Employment-related securities are not restricted securities or a restricted interest in securities by reason only that any one or more of the following is the case—

- (a) the employment-related securities (or the securities in which they are an interest) are unpaid or partly paid shares which may be forfeited for non-payment of calls and there is no restriction on the meeting of calls by the person by whom they are held,
- (b) that person may be required to offer for sale or transfer the employment-related securities on the employee ceasing, as a result of misconduct, to be employed by the employer or a person connected with the employer, or
- (c) the employment-related securities (or the securities in which they are an interest) may be redeemed on payment of any amount.

#### *Tax exemption on acquisition*

#### **425 No charge in respect of acquisition in certain cases**

- (1) Subsection (2) applies if the employment-related securities—
  - (a) are restricted securities, or a restricted interest in securities, by virtue of subsection (2) of section 423 (provision for transfer, reversion or forfeiture) at the time of the acquisition, and
  - (b) will cease to be restricted securities, or a restricted interest in securities, by virtue of that subsection within 5 years after the acquisition (whether or not they may remain restricted securities or a restricted interest in securities by virtue of the application of subsection (3) or (4) of that section).
- (2) No liability to income tax arises in respect of the acquisition, except as provided by—
  - (a) Chapter 3 of this Part (acquisition by conversion),
  - (b) Chapter 3C of this Part (acquisition for less than market value), or
  - (c) Chapter 5 of this Part (acquisition pursuant to securities option).
- (3) But the employer and the employee may elect that subsection (2) is not to apply to the employment-related securities.
- (4) An election under subsection (3)—
  - (a) is to be made by agreement by the employer and the employee, and
  - (b) is irrevocable.
- (5) Such an agreement—
  - (a) must be made in a form approved by the Board of Inland Revenue, and
  - (b) may not be made more than 14 days after the acquisition.



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### *Tax charge on post-acquisition chargeable events*

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

- [<sup>F132</sup>(1) If a chargeable event occurs in relation to the employment-related securities, the taxable amount counts as employment income of the employee for the relevant tax year.
- (2) For this purpose—
- (a) “chargeable event” has the meaning given by section 427,
  - (b) “the taxable amount” is the amount determined under section 428, and
  - (c) “the relevant tax year” is the tax year in which the chargeable event occurs.
- (3) Relief may be available under section 428A (relief for secondary Class 1 contributions met by employee) against an amount counting as employment income under this section.]
- (5) This section is subject to section 429 (case outside charge under this section).

#### **Textual Amendments**

**F132** S. 426(1)-(3) substituted for s. 426(1)-(4) (1.9.2004) by [Finance Act 2004 \(c. 12\)](#), s. 85(2), [Sch. 16 para. 1\(2\)](#); [S.I. 2004/1945](#), art. 2

#### **427 Chargeable events**

- (1) This section applies for the purposes of section 426 (charge on occurrence of chargeable event).
- (2) Any of the events mentioned in subsection (3) is a “chargeable event” in relation to the employment-related securities.
- (3) The events are—
  - (a) the employment-related securities ceasing to be restricted securities, or a restricted interest in securities, in circumstances in which an associated person is beneficially entitled to the employment-related securities after the event,
  - (b) the variation of any restriction relating to the employment-related securities in such circumstances (without the employment-related securities ceasing to be restricted securities or a restricted interest in securities), and
  - (c) the disposal for consideration of the employment-related securities, or any interest in them, by an associated person otherwise than to another associated person (at a time when they are still restricted securities or a restricted interest in securities).
- (4) For the purposes of this Chapter there is a variation of a restriction relating to the employment-related securities if any restriction in relation to them is removed or varied.

#### **428 Amount of charge**

- (1) The taxable amount for the purposes of section 426 (charge on occurrence of chargeable event) is—

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## UMV × (IUP - PCP - OP) - CE

(2) UMV is what would be the market value of the employment-related securities immediately after the chargeable event but for any restrictions.

(3) IUP is—

$$\frac{IUMV-DA}{IUMV}$$

where—

IUMV is what would have been the market value of the employment-related securities at the time of the acquisition but for any restrictions, and

DA is the total of any deductible amounts.

(4) PCP is the aggregate of the result of the application of the formula—

## IUP - PCP - OP

on each previous event (if any) occurring since the acquisition that was a chargeable event for the purposes of section 426 in relation to the employment-related securities (and so is nil if there has not been such a previous event).

(5) OP is—

$$\frac{UMV-AMV}{UMV}$$

where AMV is the actual market value of the employment-related securities immediately after the chargeable event.

(6) CE is any expenses incurred by the holder of the employment-related securities in connection with—

- (a) the employment-related securities ceasing to be restricted securities or a restricted interest in securities,
- (b) the variation of a restriction relating to the employment-related securities, or
- (c) the disposal of the employment-related securities,

together (if the chargeable event is one within section 427(3)(a) or (b) (lifting of restrictions and variation of restriction)) with any consideration given for the employment-related securities ceasing to be restricted securities or a restricted interest in securities or the variation of a restriction relating to the employment-related securities.

(7) For the purposes of this section each of the following is a “deductible amount”—

- (a) the amount of any consideration given for the acquisition of the employment-related securities,
- (b) any amount that constituted earnings from the employee’s employment under Chapter 1 of Part 3 (earnings) in respect of the acquisition of the employment-related securities,

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- (c) any amount that counted as employment income in relation to the employment-related securities under Chapter 2 or 4 of this Part as originally enacted,
  - (d) if the employment-related securities were acquired on a conversion of other employment-related securities, any amount that counted as employment income of the employee under Chapter 3 of this Part (including that Chapter as originally enacted) (convertible securities) by reason of the conversion, and
  - (e) if the acquisition of the employment-related securities was pursuant to a securities option, any amount that counted as employment income of the employee under section 476 (or section 476 or 477 as originally enacted) (acquisition of securities pursuant to securities option) by reason of the acquisition.
- (8) If the employment-related securities are convertible securities, or an interest in convertible securities, their market value is to be determined for the purposes of this section as if they were not.
- (9) Where the chargeable event is one within section 427(3)(c) (disposal) and CD is less than AMV, the taxable amount for the purposes of section 426 is the amount determined under subsection (1) multiplied by—

$$\frac{CD}{AMV}$$

where—

CD is the consideration given for the employment-related securities, and

AMV is the actual market value of the employment-related securities immediately after the chargeable event.

### <sup>F133</sup> **428 Relief for secondary Class 1 contributions met by employee**

- (1) Relief is available under this section against an amount counting as employment income under section 426 (“the employment income amount”) if—
- (a) an agreement having effect under paragraph 3A of Schedule 1 to the Contributions and Benefits Act has been entered into allowing the secondary contributor to recover from the employee the whole or part of any secondary Class 1 contribution in respect of that amount, or
  - (b) an election having effect under paragraph 3B of that Schedule is in force which has the effect of transferring to the employee the whole or part of the liability to pay secondary Class 1 contributions in respect of that amount.
- (2) The amount of the relief is the total of—
- (a) any amount that under the agreement referred to in subsection (1)(a) is recovered in respect of the employment income amount by the secondary contributor before 5th June in the tax year following that in which the chargeable event occurs, and
  - (b) the amount of any liability in respect of the employment income amount that, by virtue of the election referred to in subsection (1)(b), has become the employee’s liability.

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- (3) If notice of withdrawal of approval of the election is given, the amount of the liability referred to in subsection (2)(b) is limited to the amount met before 5th June in the tax year following that in which the chargeable event occurs.
- (4) Relief under this section is given by way of deduction from the amount otherwise counting as employment income.
- (5) Relief under this section does not affect the amount to be taken into account—
  - (a) as employment income in determining contributions payable under the Contributions and Benefits Act, or
  - (b) as relevant employment income for the purposes of paragraph 3A or 3B of Schedule 1 to that Act.
- (6) In this section—
 

“approval”, in relation to an election, means approval by the Inland Revenue under paragraph 3B of Schedule 1 to the Contributions and Benefits Act, and

“secondary contributor” has the same meaning as in that Act (see section 7).]

#### Textual Amendments

**F133** S. 428A inserted (1.9.2004) by [Finance Act 2004 \(c. 12\)](#), s. 85(2), [Sch. 16 para. 1\(3\)](#); [S.I. 2004/1945](#), art. 2

#### 429 Case outside charge under section 426

- (1) Section 426 (charge on occurrence of chargeable event) does not apply if—
  - (a) the employment-related securities are shares (or an interest in shares) in a company of a class,
  - (b) the provision by virtue of which the employment-related securities are restricted securities, or a restricted interest in securities, applies to all the company’s shares of the class,
  - <sup>[F134]</sup>(ba) subsection (1A) is satisfied,]
  - (c) all the company’s shares of the class (other than the employment-related securities) are affected by an event similar to that which is a chargeable event in relation to the employment-related securities, and
  - (d) subsection (3) or (4) is satisfied.

<sup>[F135]</sup>(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.]
- (2) For the purposes of subsection (1)(c) shares are affected by an event similar to that which is a chargeable event in relation to the employment-related securities—
  - (a) in the case of a chargeable event within section 427(3)(a) (lifting of restrictions), if the provision mentioned in subsection (1)(b) ceases to apply to them,
  - (b) in the case of a chargeable event within section 427(3)(b) (variation of restriction), if that provision is varied in relation to them in the same way as in relation to the employment-related securities, or

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- (c) in the case of a chargeable event within section 427(3)(c) (disposal), if they are disposed of.
- (3) This subsection is satisfied if, immediately before the event that would be a chargeable event, the company is employee-controlled by virtue of holdings of shares of the class.
- (4) This subsection is satisfied if, immediately before that event, the majority of the company's shares of the class are not [<sup>F136</sup>employment-related securities.]
- <sup>F137</sup>(5) .....

#### Textual Amendments

- F134** S. 429(1)(ba) inserted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), **ss. 86(2)(a)(3)(8)**, 86(1)
- F135** S. 429(1A) inserted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), **ss. 86(2)(a)(4)(8)**, 86(1)
- F136** Words in s. 429(4) substituted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), **ss. 86(2)(a)(5)(8)**, 86(1)
- F137** S. 429(5) repealed (with effect in accordance with s. 86(8) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 2(11)**

### 430 Election for outstanding restrictions to be ignored

- (1) The employer and the employee may elect that—
  - (a) on a chargeable event the taxable amount for the purposes of section 426 is to be determined by applying section 428(1) as if it did not include a reference to OP, and
  - (b) sections 426 to 429 are not to apply to the employment-related securities after that chargeable event.
- (2) An election under this section—
  - (a) is to be made by agreement by the employer and the employee, and
  - (b) is irrevocable.
- (3) Such an agreement—
  - (a) must be made in a form approved by the Board of Inland Revenue, and
  - (b) may not be made more than 14 days after the chargeable event.

### 431 Election for full or partial disapplication of this Chapter

- (1) The employer and the employee may elect in relation to employment-related securities which are restricted securities or a restricted interest in securities that—
  - (a) for the relevant tax purposes their market value at the time of the acquisition is to be calculated as if they were not, and
  - (b) sections 425 to 430 are not to apply to the employment-related securities.
- (2) Or the employer and the employee may elect in relation to employment-related securities which are restricted securities or a restricted interest in securities that—
  - (a) for the relevant tax purposes their market value at the time of the acquisition is to be calculated, and
  - (b) sections 425 to 430 are to apply to the employment-related securities, as if any specified restriction did not apply to the employment-related securities.

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- (3) For the purposes of subsections (1) and (2) “the relevant tax purposes” are—
- (a) determining any amount that is to constitute earnings from the employment under Chapter 1 of Part 3 (earnings),
  - (b) determining the amount of any gain realised on the occurrence of an event that is a chargeable event by virtue of section 439(3)(a) (conversion),
  - (c) operating Chapter 3C of this Part (acquisition of securities for less than market value), and
  - (d) determining any amount that counts as employment income of the employee under Chapter 5 of this Part (securities acquired pursuant to securities option).
- (4) An election under this section—
- (a) is to be made by agreement by the employer and the employee, and
  - (b) is irrevocable.
- (5) Such an agreement—
- (a) must be made in a form approved by the Board of Inland Revenue, and
  - (b) may not be made more than 14 days after the acquisition.

### <sup>F138</sup> 431 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.]

#### Textual Amendments

**F138** S. 431A inserted (18.6.2004 with effect in accordance with s. 88(11)-(13) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 88\(3\)](#)

### 432 Definitions

- (1) In this Chapter—
- “interest”, in relation to securities,
- “securities”,

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- “securities option”, and  
“shares”,  
have the meaning indicated in section 420.
- (2) In this Chapter “market value” has the meaning indicated in section 421(1).
- (3) For the purposes of this Chapter sections 421(2) and 421A apply for determining the amount of the consideration given for anything and section 421I applies for determining the amount of the consideration given for the acquisition of employment-related securities.
- (4) In this Chapter—  
“the acquisition”,  
“the employee” (except in section 429),  
“the employer”,  
“the employment”, and  
“employment-related securities”,  
have the meaning indicated in section 421B(8).
- (5) In this Chapter “associated person” has the meaning indicated in section 421C.
- (6) In this Chapter—  
“associated company”, and  
“employee-controlled”,  
have the meaning indicated in section 421H.
- (7) In this Chapter—  
“restricted interest in securities”, and  
“restricted securities”,  
have the meaning indicated in sections 423 and 424.
- (8) In this Chapter “restriction”, in relation to securities or an interest in securities, means provision relating to the securities or interest which is made by any contract, agreement, arrangement or condition and to which any of subsections (2) to (4) of section 423 applies.
- (9) In this Chapter “variation”, in relation to a restriction, has the meaning indicated in section 427(4).
- (10) In this Chapter “convertible securities” has the same meaning as in Chapter 3 of this Part (see section 436).]

## [<sup>F139</sup> CHAPTER 3

### CONVERTIBLE SECURITIES

#### Textual Amendments

**F139** Pt. 7 Ch. 3 substituted (1.9.2003 with effect in accordance with Sch. 22 para. 4(2) of the amending Act) by Finance Act 2003 (c. 14), Sch. 22 para. 4(1); S.I. 2003/1997, art. 2

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### *Introduction*

#### **435 Application of this Chapter**

This Chapter applies to employment-related securities if they are—

- (a) convertible securities, or
  - (b) an interest in convertible securities,
- at the time of the acquisition.

#### **436 “Convertible securities”**

For the purposes of this Chapter securities are convertible securities if—

- (a) they confer on the holder an immediate or conditional entitlement to convert them into securities of a different description,
- (b) a contract, agreement, arrangement or condition authorises or requires the grant of such an entitlement to the holder if certain circumstances arise, or do not arise, or
- (c) a contract, agreement, arrangement or condition makes provision for the conversion of the securities (otherwise than by the holder) into securities of a different description.

### *Tax relief on acquisition*

#### **437 Adjustment of charge**

For the purposes of—

- (a) any liability to tax under Chapter 1 of Part 3 (earnings), Chapter 10 of Part 3 (taxable benefits: residual liability to charge) or Chapter 5 of this Part (acquisition of securities pursuant to securities option), and
- (b) the operation of Chapter 3C of this Part (acquisition of securities for less than market value),

the market value of the employment-related securities is to be determined as if they were not convertible securities or an interest in convertible securities.

### *Tax charge on post-acquisition chargeable events*

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

[<sup>F140</sup>(1) If a chargeable event occurs in relation to the employment-related securities, the taxable amount counts as employment income of the employee for the relevant tax year.

(2) For this purpose—

- (a) “chargeable event” has the meaning given by section 439,
- (b) “the taxable amount” is the amount determined under section 440, and
- (c) “the relevant tax year” is the tax year in which the chargeable event occurs.

(3) Relief may be available under section 442A (relief for secondary Class 1 contributions met by employee) against an amount counting as employment income under this section.]



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(5) This section is subject to section 443 (case outside charge under this section).

#### Textual Amendments

**F140** S. 438(1)-(3) substituted for s. 438(1)-(4) (1.9.2004) by [Finance Act 2004 \(c. 12\), s. 85\(2\), Sch. 16 para. 2\(2\)](#); [S.I. 2004/1945, art. 2](#)

### 439 Chargeable events

- (1) This section applies for the purposes of section 438 (charge on occurrence of chargeable event).
- (2) Any of the events mentioned in subsection (3) is a “chargeable event” in relation to the employment-related securities.
- (3) The events are—
  - (a) the conversion of the employment-related securities (or the securities in which they are an interest) into securities of a different description in circumstances in which an associated person is beneficially entitled to the securities into which the employment-related securities are converted,
  - (b) the disposal for consideration of the employment-related securities, or any interest in them, by an associated person otherwise than to another associated person (at a time when they are still convertible securities or an interest in convertible securities),
  - (c) the release for consideration of the entitlement to convert the employment-related securities (or the securities in which they are an interest) into securities of a different description, and
  - (d) the receipt by an associated person of a benefit in money or money’s worth in connection with the entitlement to convert (other than securities acquired on the conversion of the employment-related securities or consideration such as is mentioned in paragraph (b) or (c)).
- (4) A benefit received on account of any disability (within the meaning of the Disability Discrimination Act 1995) of the employee is to be disregarded for the purposes of subsection (3)(d).

### 440 Amount of charge

- (1) The taxable amount for the purposes of section 438 (charge on occurrence of chargeable event) is—

#### AG - CE

- (2) AG is the amount of any gain realised on the occurrence of the chargeable event.
- (3) CE is the amount of any consideration given for the entitlement to convert the employment-related securities or the securities in which they are an interest together with the amount of any expenses incurred by the holder of the employment-related securities in connection with the conversion, disposal, release or receipt.

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- [<sup>F141</sup>(3A) If (because of subsection (2) of section 437) subsection (1) of that section did not apply in relation to the employment-related securities, the taxable amount is to be reduced by the amount by which—
- (a) the market value of the employment-related securities for the purposes specified in that subsection, exceeded
  - (b) what it would have been had that subsection applied,
- (less the aggregate of any amount by which the taxable amount on any previous chargeable event relating to the employment-related securities has been reduced under this subsection).]
- (4) Section 441 explains what is the amount of any gain realised on the occurrence of a chargeable event.
  - (5) Section 442 explains whether consideration is given for the entitlement to convert the employment-related securities or the securities in which they are an interest and, if it is, what is its amount.

#### Textual Amendments

**F141** S. 440(3A) inserted (with effect in accordance with Sch. 2 para. 10(2) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 2 para. 10(1)**

#### 441 Amount of gain realised on occurrence of chargeable event

- (1) This section applies for the purposes of section 440 (amount of charge on occurrence of chargeable event).
- (2) The amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 439(3)(a) (conversion) is—

$$\text{CMVCS} - (\text{CMVERS} + \text{CC})$$

- (3) The amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 439(3)(b) (disposal) is—

$$\text{DC} - \text{CMVERS}$$

- (4) The amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 439(3)(c) (release of entitlement to convert) is the amount of the consideration received by an associated person in respect of the release.
- (5) The amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 439(3)(d) (receipt of benefit) is the amount or market value of the benefit.
- (6) CMVCS—
  - (a) if the employment-related securities are securities, is the market value at the time of the chargeable event of the securities into which they are converted (determined, where those securities are themselves convertible securities, as if they were not), or

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- (b) if the employment-related securities are an interest in securities, is the same proportion of that market value as the market value of the interest in the securities in which the employment-related securities are an interest bears to the market value of those securities.
- (7) CMVERS is the market value of the employment-related securities at the time of the chargeable event determined as if they were not convertible securities or an interest in convertible securities.
- (8) CC is the amount of any consideration given for the conversion of the employment-related securities.
- (9) DC is the amount of the consideration given on the disposal.

#### **442 Amount of consideration given for entitlement to convert**

- (1) This section applies for the purposes of section 440 (amount of charge on occurrence of chargeable event).
- (2) Consideration is to be regarded as given for the entitlement to convert the employment-related securities (or the securities in which they are an interest) if (and only if) ACS exceeds NCMV.
- (3) The amount of the consideration to be regarded as so given is the amount of the excess.
- (4) ACS is the amount of the consideration given for the acquisition of the employment-related securities.
- (5) NCMV is the market value of the employment-related securities at the time of the acquisition, determined as if they were not convertible securities or an interest in convertible securities.

#### **[<sup>F142</sup>442] Relief for secondary Class 1 contributions met by employee**

- (1) Relief is available under this section against an amount counting as employment income under section 438 (“the employment income amount”) if—
  - (a) an agreement having effect under paragraph 3A of Schedule 1 to the Contributions and Benefits Act has been entered into allowing the secondary contributor to recover from the employee the whole or part of any secondary Class 1 contribution in respect of that amount, or
  - (b) an election having effect under paragraph 3B of that Schedule is in force which has the effect of transferring to the employee the whole or part of the liability to pay secondary Class 1 contributions in respect of that amount.
- (2) The amount of the relief is the total of—
  - (a) any amount that under the agreement referred to in subsection (1)(a) is recovered in respect of the employment income amount by the secondary contributor before 5th June in the tax year following that in which the chargeable event occurs, and
  - (b) the amount of any liability in respect of the employment income amount that, by virtue of the election referred to in subsection (1)(b), has become the employee’s liability.

*Status: Point in time view as at 07/04/2005.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 23 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) If notice of withdrawal of approval of the election is given, the amount of the liability referred to in subsection (2)(b) is limited to the amount met before 5th June in the tax year following that in which the gain is realised.
- (4) Relief under this section is given by way of deduction from the amount otherwise counting as employment income.
- (5) Relief under this section does not affect the amount to be taken into account—
- (a) as employment income in determining contributions payable under the Contributions and Benefits Act, or
  - (b) as relevant employment income for the purposes of paragraph 3A or 3B of Schedule 1 to that Act.
- (6) In this section—
- “approval”, in relation to an election, means approval by the Inland Revenue under paragraph 3B of Schedule 1 to the Contributions and Benefits Act, and
- “secondary contributor” has the same meaning as in that Act (see section 7).]

#### Textual Amendments

**F142** S. 442A inserted (1.9.2004) by [Finance Act 2004 \(c. 12\)](#), s. 85(2), [Sch. 16 para. 2\(3\)](#); [S.I. 2004/1945](#), art. 2

#### 443 Case outside charge under section 438

- (1) Section 438 (charge on occurrence of chargeable event) does not apply if—
- (a) the employment-related securities are shares (or an interest in shares) in a company of a class,
  - (b) all the company’s shares of the class are convertible securities,
  - <sup>[F143]</sup>(ba) subsection (1A) is satisfied,]
  - (c) all the company’s shares of the class (other than the employment-related securities) are affected by an event similar to that which is a chargeable event in relation to the employment-related securities, and
  - (d) subsection (3) or (4) is satisfied.
- <sup>[F144]</sup>(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.]
- (2) For the purposes of subsection (1)(c) shares are affected by an event similar to that which is a chargeable event in relation to the employment-related securities—
- (a) in the case of a chargeable event within section 439(3)(a) (conversion), if they are converted into securities of a different description,
  - (b) in the case of a chargeable event within section 439(3)(b) (disposal), if they are disposed of,
  - (c) in the case of a chargeable event within section 439(3)(c) (release of entitlement to convert), if the entitlement to convert them into securities of a different description is released, or
  - (d) in the case of a chargeable event within section 439(3)(d) (receipt of benefit), if a similar benefit is received in respect of the entitlement to convert them.

*Status: Point in time view as at 07/04/2005.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 23 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) This subsection is satisfied if, immediately before the event that would be a chargeable event, the company is employee-controlled by virtue of holdings of shares of the class.

(4) This subsection is satisfied if, immediately before that event, the majority of the company's shares of the class are not [<sup>F145</sup>employment-related securities.]

<sup>F146</sup>(5) . . . . .

**Textual Amendments**

**F143** S. 443(1)(ba) inserted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), ss. 86(2)(b)(3)(8), 86(1)

**F144** S. 443(1A) inserted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), ss. 86(2)(b)(4)(8), 86(1)

**F145** Words in s. 443(4) substituted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), ss. 86(2)(b)(5)(8), 86(1)

**F146** S. 443(5) repealed (with effect in accordance with s. 86(8) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(11\)](#)

*Supplementary*

**444 Definitions**

- (1) In this Chapter—
  - “interest”, in relation to securities,
  - “securities”, and
  - “shares”,have the meaning indicated in section 420.
- (2) In this Chapter “market value” has the meaning indicated in section 421(1).
- (3) For the purposes of this Chapter sections 421(2) and 421A apply for determining the amount of the consideration given for anything and section 421I applies for determining the amount of the consideration given for the acquisition of employment-related securities.
- (4) In this Chapter—
  - “the acquisition”,
  - “the employee” (except in section 443), and
  - “employment-related securities”,have the meaning indicated in section 421B(8).
- (5) In this Chapter “associated person” has the meaning indicated in section 421C.
- (6) In this Chapter—
  - “associated company”, and
  - “employee-controlled”,have the meaning indicated in section 421H.
- (7) In this Chapter “convertible securities” has the meaning indicated in section 436.]

*Status: Point in time view as at 07/04/2005.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 23 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## [<sup>F147</sup>CHAPTER 3A

### SECURITIES WITH ARTIFICIALLY DEPRESSED MARKET VALUE

#### Textual Amendments

**F147** Pt. 7 Ch. 3A inserted (16.4.2003 with effect in accordance with Sch. 22 para. 5(2)-(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), **Sch. 22 para. 5(1)**

#### *Introduction*

#### **446A Application of this Chapter**

- (1) This Chapter applies in certain cases where the market value of employment-related securities (or other relevant securities or interests in securities) is reduced by things done otherwise than for genuine commercial purposes.
- (2) The following are among the things that are, for the purposes of this Chapter, done otherwise than for genuine commercial purposes—
  - (a) anything done as part of a scheme or arrangement the main purpose, or one of the main purposes, of which is the avoidance of tax or national insurance contributions, and
  - (b) any transaction 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 a payment for group relief).
- (3) In subsection (2)(b)—
  - (a) “group” means a company and its 51% subsidiaries, and
  - (b) “group relief” has the same meaning as in section 402(6) of ICTA.

#### *Tax charge on acquisition*

#### **446B Charge on acquisition**

- (1) This section applies where the market value of employment-related securities at the time of the acquisition has been reduced by at least 10% as a result of things done otherwise than for genuine commercial purposes within the period of 7 years ending with the acquisition.
- (2) The taxable amount determined under section 446C counts as employment income of the employee for the tax year in which the acquisition occurs.
- (3) But this section does not apply if section 425(2) (no charge on acquisition of certain restricted securities or restricted interests in securities) applies in relation to the employment-related securities.
- (4) This section does not affect any liability to income tax arising in respect of the acquisition of the employment-related securities under—
  - (a) Chapter 1 of Part 3 (earnings),
  - (b) Chapter 10 of Part 3 (taxable benefits: residual liability to charge),
  - (c) Chapter 3 of this Part (acquisition by conversion),

*Status: Point in time view as at 07/04/2005.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 23 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (d) Chapter 3C of this Part (acquisition for less than market value), or
- (e) Chapter 5 of this Part (acquisition pursuant to securities option).

#### **446C Amount of charge**

- (1) The taxable amount for the purposes of section 446B (charge on acquisition) is—

**FMV - MV**

- (2) FMV is what would be the market value of the employment-related securities at the time of the acquisition if the things mentioned in section 446B(1) had not been done.
- (3) MV is the actual market value of the employment-related securities at the time of the acquisition.
- (4) But where what would be MV is less than the amount of any consideration given for the acquisition of the employment-related securities, MV is the amount of that consideration.
- (5) This section is subject to section 446D (restricted securities and convertible securities).

#### **446D Restricted securities and convertible securities**

- (1) Where the employment-related securities are restricted securities or a restricted interest in securities, FMV (but not MV) is to be determined as if the employment-related securities were not restricted securities or a restricted interest in securities; and, accordingly, sections 426 to 431 (post-acquisition charges on restricted securities) do not apply to the employment-related securities.
- (2) Where the employment-related securities are convertible securities or an interest in convertible securities, FMV and MV are to be determined as if they were not.

*Other tax charges*

#### **446E Charge on restricted securities**

- (1) This section applies where the market value of employment-related securities which are restricted securities or a restricted interest in securities is artificially low—
  - (a) immediately after an event which is a chargeable event in relation to the employment-related securities for the purposes of section 426 (charge on restricted securities),
  - <sup>F148</sup>(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,] or
  - (b) on 5th April in any year.
- (2) The market value of the employment-related securities is artificially low where it has been reduced by at least 10% as a result of things done otherwise than for genuine commercial purposes within the relevant period.

<sup>F149</sup>(3) “The relevant period” is the period beginning—

*Status: Point in time view as at 07/04/2005.*

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- (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).]

#### **Textual Amendments**

**F148** S. 446E(1)(aa) inserted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), s. 87(2)(4) (with s. 87(5))

**F149** Ss. 446E(3)-(10) substituted for (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), s. 87(3)(4) (with s. 87(5))



*Status: Point in time view as at 07/04/2005.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 23 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### **446F Adjustment of market value: conditional interests**

- (1) This section applies where the market value of an employee's interest in shares which is only conditional is artificially low immediately after a chargeable event relating to the shares under section 427 as originally enacted.
- (2) The market value of the shares is artificially low where it has been reduced by at least 10% as a result of things done otherwise than for genuine commercial purposes within the period beginning—
  - (a) 7 years before the chargeable event, or
  - (b) with 16th April 2003,whichever is later.
- (3) There is a chargeable event in relation to shares if section 427 (as originally enacted) applies in relation to them.
- (4) The reference in the definition of MV in section 428(1) (as originally enacted) to the market value of the employee's interest is to what would be the market value but for the reduction as a result of the things done as mentioned in subsection (2).
- (5) Expressions used in this section and in Chapter 2 of this Part as originally enacted have the same meaning in this section as in that Chapter.

#### **446G Adjustment of market value: consideration for entitlement to convert**

- (1) This section applies where the market value of employment-related securities which are convertible securities or an interest in convertible securities (determined as if they were not) has been reduced by at least 10% as a result of things done otherwise than for genuine commercial purposes within the period of 7 years ending with the acquisition.
- (2) The reference to the market value of the employment-related securities in the definition of NCMV in section 442(5) (value of convertible securities at time of acquisition) is to what would be the market value but for the reduction as a result of the things done as mentioned in subsection (1) (and but for the fact that they are convertible securities or an interest in convertible securities).

#### **446H Adjustment of market value: charge on conversion**

- (1) This section applies where the market value of securities ("the converted securities") into which employment-related securities (or securities in which employment-related securities are an interest) are converted is artificially low at the time of an event which is a chargeable event in relation to the employment-related securities by virtue of section 439(3)(a) (conversion).
- (2) The market value of the converted securities is artificially low where it has been reduced by at least 10% as a result of things done otherwise than for genuine commercial purposes within the period of 7 years ending with the chargeable event.
- (3) The references to the market value of the converted securities in the definition of CMVCS in section 441(6) (amount of gain realised by conversion) are to what would be the market value but for the reduction as a result of the things done as mentioned in subsection (2).

*Status: Point in time view as at 07/04/2005.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 23 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### **446I Adjustment of consideration or benefit received**

- (1) This section applies where any consideration or benefit mentioned in—
- (a) section 428(9) (consideration on disposal of restricted securities),
  - (b) section 441(4), (5) or (9) (consideration for disposal of convertible securities or release of entitlement to convert or benefit received in respect of entitlement to convert),
  - (c) section 446C(4) (securities with artificially depressed market value: MV to be amount of consideration),
  - (d) sections 446X and 446Y(3) (consideration for disposal of securities exceeding market value), or
  - (e) section 448 (securities benefit not otherwise subject to tax),
- consists (in whole or in part) in the provision of securities or an interest in securities the market value of which is artificially low.
- (2) The market value of any securities or interest in securities is artificially low where it has been reduced by at least 10% as a result of things done otherwise than for genuine commercial purposes within the period of 7 years ending with the receipt of the consideration or benefit.
- (3) The market value of the consideration or benefit consisting in the provision of the securities or interest in securities is for the purposes of the provision or provisions concerned to be taken to be what it would be but for the reduction as a result of the things done as mentioned in subsection (2).

#### **<sup>F150</sup>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.]

#### **Textual Amendments**

**F150** S. 446IA inserted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\), s. 86\(6\)\(8\)](#)

*Status: Point in time view as at 07/04/2005.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 23 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## *Supplementary*

### **446J Definitions**

- (1) In this Chapter—  
“interest”, in relation to securities, and  
“securities”,  
have the meaning indicated in section 420.
- (2) In this Chapter “market value” has the meaning indicated in section 421(1).
- (3) For the purposes of this Chapter sections 421(2) and 421A apply for determining the amount of the consideration given for anything and section 421I applies for determining the amount of the consideration given for the acquisition of employment-related securities.
- (4) In this Chapter—  
“the acquisition”,  
“the employee”, and  
“employment-related securities”,  
have the meaning indicated in section 421B(8).
- (5) In this Chapter—  
“restricted interest in securities”, and  
“restricted securities”,  
have the same meaning as in Chapter 2 of this Part (see sections 423 and 424).
- (6) In this Chapter “restriction” has the same meaning as in Chapter 2 of this Part (see section 432(8)).
- (7) In this Chapter “convertible securities” has the same meaning as in Chapter 3 of this Part (see section 436).]

## **[<sup>F151</sup>CHAPTER 3B**

### **SECURITIES WITH ARTIFICIALLY ENHANCED MARKET VALUE**

#### **Textual Amendments**

**F151** Pt. 7 Ch. 3B inserted (16.4.2003 with effect in accordance with Sch. 22 para. 6(2)-(4) of the amending Act) by **Finance Act 2003 (c. 14), Sch. 22 para. 6(1)**

## *Introduction*

### **446K Application of this Chapter**

- (1) This Chapter applies in certain cases where the market value of employment-related securities is increased by things done otherwise than for genuine commercial purposes.

*Status: Point in time view as at 07/04/2005.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 23 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) The following are among the things that are, for the purposes of this Chapter, done otherwise than for genuine commercial purposes—
- (a) anything done as part of a scheme or arrangement the main purpose, or one of the main purposes, of which is the avoidance of tax or national insurance contributions, and
  - (b) any transaction 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 a payment for group relief).
- (3) In subsection (2)(b)—
- (a) “group” means a company and its 51% subsidiaries, and
  - (b) “group relief” has the same meaning as in section 402(6) of ICTA.
- (4) In this Chapter, in relation to the market value of the employment-related securities—
- “non-commercial increase” means an increase in the market value as a result of anything done otherwise than for genuine commercial purposes, and
- “non-commercial reduction” means a reduction in the market value as a result of anything done otherwise than for genuine commercial purposes.

#### *Charge on non-commercial increases*

#### **446L Charge on non-commercial increases**

- (1) This section applies in relation to employment-related securities where on a date that is the valuation date in relation to a relevant period IMV is at least 10% greater than MV.
- (2) The taxable amount determined under subsection (4) counts as employment income of the employee for the relevant tax year (but subject to sections 446M and 446N).
- (3) The “relevant tax year” is the tax year in which the valuation date falls.
- (4) The taxable amount is—

$$\text{IMV} - \text{MV}$$

- (5) IMV is the market value of the employment-related securities on the valuation date.
- (6) MV is the amount that would be the market value of the employment-related securities on the valuation date if any non-commercial increases during the relevant period were disregarded.
- (7) For the purposes of subsections (5) and (6)—
  - (a) any restrictions having effect in relation to the employment-related securities on the valuation date, and
  - (b) any non-commercial reductions during the relevant period, are to be disregarded.

#### **446M Securities subject to restriction on valuation date**

- (1) This section applies where on the valuation date the employment-related securities are relevant restricted securities.

*Status: Point in time view as at 07/04/2005.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 23 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) The amount determined under section 446L(4) is to be multiplied by CP.

(3) CP is—

## 1-OP

where OP is the amount that would be determined under section 428(5) (amount of charge on chargeable event in relation to restricted securities) on the valuation date if there were on that date a chargeable event (resulting in no tax charge).

(4) For the purposes of this section the employment-related securities are relevant restricted securities if they are restricted securities or a restricted interest in securities but are not subject to—

- (a) an election under section 430 (election to ignore outstanding restrictions) in relation to a chargeable event which occurred before the valuation date, or
- (b) an election under section 431(1) (election to treat securities as not subject to restrictions).

(5) If sections 425 to 430 apply to the employment-related securities in accordance with section 431(2) (election to treat securities as not subject to specified restrictions), the reference in subsection (3) to the amount that would be determined under section 428(5) is to the amount that would be so determined in accordance with section 431(2).

### 446N Securities subject to restriction during relevant period

(1) This section applies where the employment-related securities have been restricted securities or a restricted interest in securities at any time during the relevant period.

(2) DA is to be deducted from the amount determined under section 446L(4) (or, where section 446M applies, the amount determined under sections 446L(4) and 446M).

(3) DA is the aggregate of the amounts arrived at under subsection (4) in relation to each event occurring during the relevant period that is a chargeable event in relation to the employment-related securities.

(4) The amount is—

## TA- ARTA

(5) TA is the taxable amount actually determined under section 428 in relation to the chargeable event.

(6) ARTA is the taxable amount which would have been determined under section 428 in relation to the chargeable event if any non-commercial increases during the period—

- (a) beginning at the same time as the relevant period, and
- (b) ending immediately before the chargeable event,

had been disregarded.

### Disapplication of exceptions from charges

<sup>F152</sup>446NA

(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

*Status: Point in time view as at 07/04/2005.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 23 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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.]

#### **Textual Amendments**

**F152** S. 446NA inserted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\), s. 86\(7\)\(8\)](#)

### *Supplementary*

#### **446O “Relevant period” and “valuation date”**

- (1) This section explains what is meant by “relevant period” and “valuation date” in this Chapter.
- (2) The first relevant period in relation to employment-related securities is the period beginning with the date of the acquisition and ending with the following 5th April.
- (3) After the first relevant period, each period beginning with 6th April and ending with the following 5th April is a relevant period in relation to the employment-related securities.
- (4) But if this Chapter ceases to apply to the employment-related securities during a relevant period, the relevant period ends with the date on which this Chapter ceases to apply to them.
- (5) And if this Chapter ceases to apply to an interest in the employment-related securities during a relevant period, the relevant period ends in relation to that interest with the date on which this Chapter ceases to apply to that interest.
- (6) In a case where subsection (5) applies, this Chapter has effect separately in relation to that interest and the remainder of the employment-related securities.
- (7) In this Chapter “valuation date”, in relation to a relevant period, means the date with which the relevant period ends.

#### **446P Definitions**

- (1) In this Chapter “interest”, in relation to securities, has the meaning indicated in section 420.
- (2) In this Chapter “market value” has the meaning indicated in section 421(1).

*Status: Point in time view as at 07/04/2005.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 23 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) In this Chapter—  
“the acquisition”,  
“the employee”, and  
“employment-related securities”,  
have the meaning indicated in section 421B(8).
- (4) In this Chapter—  
“restricted interest in securities”, and  
“restricted securities”,  
have the same meaning as in Chapter 2 of this Part (see sections 423 and 424).
- (5) In this Chapter “chargeable event” means an event which is a chargeable event for the purposes of section 426.
- (6) In this Chapter “restriction” has the same meaning as in Chapter 2 of this Part (see section 432(8)).
- (7) In this Chapter—  
“non-commercial increase”, and  
“non-commercial reduction”,  
have the meaning indicated in section 446K(4).
- (8) In this Chapter—  
“relevant period”, and  
“valuation date”,  
have the meaning indicated in section 446O.]

## [<sup>F153</sup>CHAPTER 3C

### SECURITIES ACQUIRED FOR LESS THAN MARKET VALUE

#### Textual Amendments

**F153** Pt. 7 Ch. 3C inserted (with effect in accordance with Sch. 22 para. 7(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 7\(1\)](#)

#### 446Q Application of this Chapter

- (1) This Chapter applies if—  
(a) no payment is made for employment-related securities at or before the time of the acquisition, or  
(b) the payment made for employment-related securities at or before that time is less than their market value.
- (2) For the purposes of subsection (1) any obligation to make a payment or further payment after the time of the acquisition is to be disregarded.
- (3) Where the employment-related securities are, or are an interest in, securities which are not fully paid up, the reference in subsection (1) to the market value of the

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employment-related securities is to what it would be if the securities were fully paid up.

(4) If section 425(2) (no charge on acquisition of certain restricted securities or restricted interests in securities) applies in relation to the employment-related securities, this Chapter has effect as if the employment-related securities were not acquired until the occurrence of the first event which is a chargeable event for the purposes of section 426 in relation to the employment-related securities.

(5) This section is subject to section 446R (case outside this Chapter).

#### **446R Case outside this Chapter**

(1) This Chapter does not apply if—

- (a) the employment-related securities are shares (or an interest in shares) in a company of a class,
- (b) all the company’s shares of the class are acquired either for no payment or for a payment less than their market value,

<sup>F154</sup>(ba) [ subsection (1A) is satisfied,] and

- (c) subsection (3) or (4) is satisfied.

<sup>F155</sup>(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.]

(2) Where the company’s shares of the class are not fully paid up, the reference in subsection (1) to their market value is to what it would be if they were fully paid up.

(3) This subsection is satisfied if, at the time of the acquisition of the employment-related securities, the company is employee-controlled by virtue of holdings of shares of the class.

(4) This subsection is satisfied if, at that time, the majority of the company’s shares of the class are not <sup>F156</sup>employment-related securities.]

<sup>F157</sup>(5) . . . . .

#### **Textual Amendments**

**F154** S. 446R(1)(ba) inserted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), **ss. 86(2)(c)(3)(8)**, 86(1)

**F155** S. 446R(1A) inserted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), **ss. 86(2)(c)(4)(8)**, 86(1)

**F156** Words in s. 446R(4) substituted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), **ss. 86(2)(c)(5)(8)**, 86(1)

**F157** S. 446R(5) repealed (with effect in accordance with s. 86(8) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 2(11)**

#### **446S Notional loan**

(1) Where this Chapter applies an interest-free loan (“the notional loan”) is to be treated as having been made to the employee by the employer at the time of the acquisition.



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- (2) The provisions listed in subsection (3) apply as though the notional loan were an employment-related loan as defined in section 174 if and for so long as the employment has not terminated.
- (3) 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).

#### **446T Amount of notional loan**

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

**MV - DA**

where—

MV is the market value of the employment-related securities at the time of the acquisition, and

DA is the total of any deductible amounts.

- (2) Where the employment-related securities are, or are an interest in, securities which are not fully paid up, the reference in subsection (1) to the market value of the employment-related securities is to what it would be if the securities were fully paid up.
- (3) For the purposes of subsection (1) each of the following is a “deductible amount”—
  - (a) any payment made for the employment-related securities by the employee, and any payment so made by the person by whom they were acquired (if not the employee), at or before the time of the acquisition,
  - (b) any amount that constitutes earnings from the employee’s employment under Chapter 1 of Part 3 (earnings) in respect of the acquisition of the employment-related securities,
  - (c) if section 425(2) (no charge on acquisition of certain restricted securities or restricted interests in securities) applies in relation to the employment-related securities, any amount that counts as employment income of the employee under section 426 by reason of the first event which is a chargeable event for the purposes of that section in relation to the employment-related securities,
  - (d) if the employment-related securities were acquired on a conversion of other employment-related securities, any amount that counts as employment income of the employee under section 438 (charge on conversion) by reason of the conversion, and
  - (e) if the acquisition is pursuant to a securities option, any amount that counted as employment income of the employee under section 476 (acquisition of securities pursuant to securities option) in respect of the acquisition.

*Status: Point in time view as at 07/04/2005.*

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- (4) 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 securities after the acquisition but before that time.

#### **446U Discharge of notional loan**

- (1) The notional loan is treated as discharged when—
- (a) the employment-related securities are disposed of otherwise than to an associated person, or
  - (b) if the employment-related securities were securities, or an interest in securities, not fully paid up at the time of the acquisition, the outstanding or contingent liability to pay for them is released, transferred or adjusted so as no longer to bind any associated person.
- (2) If the notional loan is discharged as the result of an event specified in subsection (1), the amount of the notional loan outstanding immediately before the occurrence of the event counts as employment income of the employee for the relevant tax year (whether or not the employment has terminated before or since the acquisition).
- (3) The “relevant tax year” is the tax year in which the notional loan is treated as discharged.
- (4) The notional loan is also treated as discharged when—
- (a) payments or further payments for the employment-related securities equal to the amount initially outstanding in relation to them have been made by an associated person, or
  - (b) the employee dies.

#### **446V Chapter to be additional to other income tax charges**

This Chapter does not affect any liability to income tax arising in respect of the acquisition under—

- (a) Chapter 1 of Part 3 (earnings),
- (b) Chapter 10 of Part 3 (taxable benefits: residual liability to charge),
- (c) Chapter 3 of this Part (acquisition by conversion),
- (d) Chapter 3A of this Part (securities with artificially depressed market value), or
- (e) Chapter 5 of this Part (acquisition of securities pursuant to securities option).

#### **446W Definitions**

- (1) In this Chapter—
- “interest”, in relation to securities,  
 “securities”,  
 “securities option”, and  
 “shares”,  
 have the meaning indicated in section 420.
- (2) In this Chapter “market value” has the meaning indicated in section 421(1).

*Status: Point in time view as at 07/04/2005.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 23 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) In this Chapter “the acquisition” has the meaning indicated in section 421B(8) (but subject to section 446Q(4)).
- (4) In this Chapter—  
“the employment”,  
“the employee” (except in section 446R),  
“the employer”, and  
“employment-related securities”,  
have the meaning indicated in section 421B(8).
- (5) In this Chapter “associated person” has the meaning indicated in section 421C.
- (6) In this Chapter—  
“associated company”, and  
“employee-controlled”,  
have the meaning indicated in section 421H.
- (7) In this Chapter “the notional loan” has the meaning indicated in section 446S(1).]

## [<sup>F158</sup>CHAPTER 3D

### SECURITIES DISPOSED OF FOR MORE THAN MARKET VALUE

#### Textual Amendments

**F158** Pt. 7 Ch. 3D inserted (with effect in accordance with Sch. 22 para. 8(2) of the amending Act) by  
[Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 8\(1\)](#)

#### **446X Application of this Chapter**

This Chapter applies if—

- (a) employment-related securities are disposed of by an associated person so that no associated person is any longer beneficially entitled to them, and
- (b) the disposal is for a consideration which exceeds the market value of the employment-related securities at the time of the disposal.

#### **446Y Amount treated as income**

- (1) Where this Chapter applies the amount determined under subsection (3) counts as employment income of the employee for the relevant tax year.
- (2) The “relevant tax year” is the tax year in which the disposal occurs.
- (3) The amount is—

### CD- MV - DA

where—

CD is the amount of the consideration given on the disposal,

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MV is the market value of the employment-related securities at the time of the disposal, and

DA is the amount of any expenses incurred in connection with the disposal.

#### **446Z Definitions**

- (1) In this Chapter “market value” has the meaning indicated in section 421(1).
- (2) For the purposes of this Chapter sections 421(2) and 421A apply for determining the amount of the consideration given for anything.
- (3) In this Chapter—
  - “the employee”, and
  - “employment-related securities”,
 have the meaning indicated in section 421B(8).
- (4) In this Chapter “associated person” has the meaning indicated in section 421C.]

## [<sup>F159</sup>CHAPTER 4

### POST-ACQUISITION BENEFITS FROM SECURITIES

#### **Textual Amendments**

**F159** Pt. 7 Ch. 4 (ss. 447-450) substituted for Pt. 7 Ch. 4 (ss. 447-470) (16.4.2003 with effect in accordance with Sch. 22 para. 9(2)-(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 9\(1\)](#)

#### **447 Charge on other chargeable benefits from securities**

- (1) This Chapter applies if an associated person receives a benefit [<sup>F160</sup>in connection with employment-related securities] .
- (2) The taxable amount determined under section 448 counts as employment income of the employee for the relevant tax year.
- (3) The “relevant tax year” is the tax year in which the benefit is received.
- (4) This section does not apply if the benefit is otherwise chargeable to income tax.
- (5) This section is subject to section 449 (case outside this Chapter).

#### **Textual Amendments**

**F160** Words in s. 447(1) substituted (with effect in accordance with Sch. 2 para. 18(4) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 2 para. 18\(2\)](#)

#### **448 Amount of charge**

The taxable amount for the purposes of section 447 (charge on other chargeable benefits) is the amount or market value of the benefit.

*Status: Point in time view as at 07/04/2005.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 23 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### 449 Case outside this Chapter

- (1) This Chapter does not apply if—
- (a) the employment-related securities are shares (or an interest in shares) in a company of a class,
  - (b) a similar benefit is received by the owners of all the company’s shares of the class,
  - <sup>F161</sup>(ba) subsection (1A) is satisfied,] and
  - (c) subsection (2) or (3) is satisfied.

<sup>F162</sup>(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.]

(2) This subsection is satisfied if, immediately before the receipt of the benefit, the company is employee-controlled by virtue of holdings of shares of the class.

(3) This subsection is satisfied if, immediately before the receipt of the benefit, the majority of the company’s shares of the class are not <sup>F163</sup>employment-related securities.]

<sup>F164</sup>(4) . . . . .

#### Textual Amendments

- F161** S. 449(1)(ba) inserted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), ss. 86(2)(d)(3)(8), 86(1)
- F162** S. 449(1A) inserted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), ss. 86(2)(d)(4)(8), 86(1)
- F163** Words in s. 449(3) substituted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), ss. 86(2)(d)(5)(8), 86(1)
- F164** S. 449(4) repealed (with effect in accordance with s. 86(8) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(11\)](#)

#### 450 Definitions

- (1) In this Chapter—
- “interest”, in relation to shares, and
  - “shares”,
- have the meaning indicated in section 420(8).
- (2) In this Chapter “market value” has the meaning indicated in section 421(1).
- (3) In this Chapter—
- “the employee” (except in section 449), and
  - “employment-related securities”,
- have the meaning indicated in section 421B(8).
- (4) In this Chapter “associated person” has the meaning indicated in section 421C.
- (5) In this Chapter—
- “associated company”, and
  - “employee-controlled”,
- have the meaning indicated in section 421H.]

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*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 23 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

*Tax charge where restrictions or rights varied*

**F159 451 Amount of charge**

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**F159 452 Cases outside charge under section 449**

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**Modifications etc. (not altering text)**

- C8** S. 452(1) applied (with effect in accordance with s. 21(1) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 21\(2\)](#)
- C9** S. 452(2)(a) applied (with effect in accordance with s. 21(1) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 21\(2\)](#)
- C10** S. 452(2)(c)(d) applied (with effect in accordance with s. 21(1) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 21\(2\)](#)
- C11** S. 452(2)(c)(d) applied (with effect in accordance with s. 21(1) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 21\(2\)](#)

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

**F159 453 Charge on increase in value of shares of dependent subsidiary**

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**F159 454 Chargeable increases**

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**F159 455 Amount of charge**

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**F159 456 Cases outside charge under section 453**

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*Tax charge on other benefits from shares*

**F159 457 Charge on other chargeable benefits from shares**

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**F159 458 Chargeable benefits**

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*Status: Point in time view as at 07/04/2005.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 23 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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**F159 459 Amount of charge**

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**F159 460 Cases outside charge under section 457**

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*Supplementary provisions*

**F159 461 Related acquisitions of additional shares**

.....

**F159 462 Company reorganisations etc.**

.....

**F159 463 Disposals of shares to connected persons etc. ignored**

.....

**F159 464 Application to interests in shares**

.....

**F159 465 Duty to notify acquisitions of shares or interests in shares**

.....

**F159 466 Duty to notify chargeable events and chargeable benefits**

.....

*Interpretation*

**F159 467 Meaning of “dependent subsidiary”**

.....

**F159 468 Meaning of “employee-controlled”**

.....

**F159 469 Shares “held by outside shareholders”**

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*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 23 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## <sup>F159</sup> 470 Minor definitions

### [<sup>F165</sup> CHAPTER 4A

#### SHARES IN RESEARCH INSTITUTION SPIN-OUT COMPANIES

##### Textual Amendments

**F165** Pt. 7 Ch. 4A inserted (with effect in accordance with s. 20(5)-(7) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 20\(1\)](#)

#### *Introduction*

### 451 Application of this Chapter

- (1) This Chapter applies where—
- (a) an agreement is made for one or more transfers of intellectual property (an “intellectual property agreement”) from one or more research institutions to a company (a “spin-out company”),
  - (b) a person acquires shares (or an interest in shares) in the spin-out company before the intellectual property agreement is made or within the period of 183 days beginning with the date on which it is made,
  - (c) the right or opportunity to acquire the shares (or interest in shares) was available by reason of employment by the research institution (or any of them) or by the spin-out company, and
  - (d) the person is involved in research in relation to any of the intellectual property that is the subject of the intellectual property agreement.
- (2) But this Chapter does not apply if the avoidance of tax or national insurance is the main purpose (or one of the main purposes) of the arrangements under which the right or opportunity to acquire the shares (or interest in shares) is made available.

#### *Tax relief on acquisition*

### 452 Market value on acquisition

- (1) For the relevant tax purposes the market value of the shares (or interest in shares) at the time of the acquisition is to be calculated disregarding the effect on that market value of the intellectual property agreement and any transfer of intellectual property pursuant to it.
- (2) For the purposes of subsection (1) “the relevant tax purposes” are—
- (a) determining any amount that is to constitute earnings from the employment under Chapter 1 of Part 3 (earnings),
  - (b) determining the amount of any gain realised on the occurrence of an event that is a chargeable event by virtue of section 439(3)(a) (conversion),



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- (c) operating Chapter 3C of this Part (acquisition of securities for less than market value), and
- (d) determining any amount that counts as employment income of the employee under Chapter 5 of this Part (securities acquired pursuant to securities option).

**Modifications etc. (not altering text)**

- C8** S. 452(1) applied (with effect in accordance with s. 21(1) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 21\(2\)](#)
- C9** S. 452(2)(a) applied (with effect in accordance with s. 21(1) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 21\(2\)](#)
- C10** S. 452(2)(c)(d) applied (with effect in accordance with s. 21(1) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 21\(2\)](#)

*Tax relief following acquisition*

**453 Taxable amount under Chapter 4**

- (1) If the shares are (or interest in shares is) acquired before the intellectual property agreement is made, or before any transfer of intellectual property pursuant to it, and any benefit deriving from the intellectual property agreement or any such transfer is received by the employee in connection with the shares (or interest in shares), the taxable amount determined under section 448 (post-acquisition benefits from securities: amount of charge) is to be treated as nil.
- (2) But this section does not apply if something which affects the shares (or interest in shares) has been done (at or before the time when the intellectual property agreement is made or intellectual property is transferred) as part of a scheme or arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax or national insurance contributions.

**Modifications etc. (not altering text)**

- C12** S. 453(1) applied (with effect in accordance with s. 21(1) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 21\(2\)](#)

*Disapplication of Chapters 2 and 3B*

**454 Deemed election for disapplication of Chapter 2**

- (1) If the shares are restricted securities (or the interest in shares is a restricted interest in securities), the employer and the employee are to be treated as making an election under section 431(1) (election for disapplication of Chapter 2) in relation to the shares (or interest in shares).
- (2) But the employer and the employee may agree that subsection (1) is not to apply in relation to the shares (or interest in shares).
- (3) An agreement under subsection (2) is irrevocable and—
  - (a) must be made in a form approved by the Board of the Inland Revenue, and

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- (b) may not be made more than 14 days after the acquisition.
- (4) If the employer and the employee make an agreement under subsection (2) in relation to the shares (or interest in shares), subsection (5) applies for the purposes of determining the taxable amount for the purposes of section 426 (charge on occurrence of chargeable event) on the occurrence on any chargeable event in relation to the shares (or interest in shares).
- (5) In determining under section 428(3) (amount of charge) what would have been the market value of the shares (or interest in shares) at the time of the acquisition but for any restrictions (IUMV), that market value is to be calculated disregarding the effect on that market value of the intellectual property agreement and any transfer of intellectual property pursuant to it.

#### **455 Disapplication of Chapter 3B**

For the purposes of Chapter 3B (securities with artificially enhanced market value) neither the intellectual property agreement nor any transfer of intellectual property pursuant to it are things done otherwise than for genuine commercial purposes.

#### *Supplementary*

#### **456 Meaning of “intellectual property” and “transfer”**

- (1) In this Chapter “intellectual property” means—
  - (a) any patent, trade mark, registered design, copyright or design right, plant breeders' rights or rights under section 7 of the Plant Varieties Act 1997,
  - (b) any right under the law of a country or territory outside the United Kingdom corresponding to, or similar to, a right within paragraph (a),
  - (c) any information or technique not protected by a right within paragraph (a) or (b) but having industrial, commercial or other economic value,
  - (d) any licence or other right in respect of anything within paragraph (a), (b) or (c), or
  - (e) any goodwill (having the meaning that it has for accounting purposes) associated with anything within paragraphs (a) to (d).
- (2) The Treasury may by order amend the definition of “intellectual property” in subsection (1).
- (3) For the purposes of this Chapter a transfer of intellectual property includes—
  - (a) a sale of the intellectual property,
  - (b) the grant of a licence or other right in respect of it, and
  - (c) the assignment of a licence or other right in respect of it.

#### **457 Meaning of “research institution”**

- (1) In this Chapter “research institution” means—
  - (a) any university or other institution that is a publicly funded institution as defined in section 41(2) of the Higher Education Act 2004, or

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- (b) any institution that carries out research activities otherwise than for profit and that is neither controlled nor wholly or mainly funded by a person who carries on activities for profit.
- (2) The Treasury may by order amend subsection (1) to include in or exclude from the definition of “research institution” a person specified in the order or persons of a description specified in the order.

#### **458 Meaning of “involved in research”**

For the purposes of this Chapter a person is involved in research in relation to any intellectual property transferred or to be transferred from one or more research institutions if—

- (a) he has been actively engaged for the research institution (or any of them) in connection with research (whether as an employee or otherwise), and
- (b) that research is relevant to anything to which the intellectual property relates.

#### **459 Transfer of intellectual property by controlled company**

- (1) For the purposes of this Chapter where a research institution has control of a company, a transfer of intellectual property from the company is to be treated as a transfer from the research institution.
- (2) For the purposes of this Chapter where two or more research institutions together have control of a company, a transfer of intellectual property from the company is to be treated as a transfer from those research institutions.
- (3) In this section “control” means control within the meaning of section 416 of ICTA.

#### **460 Definitions**

- (1) In this Chapter—
  - “interest”, in relation to shares, and
  - “shares”,have the meaning indicated in section 420.
- (2) In this Chapter “market value” has the meaning indicated in section 421(1).
- (3) In this Chapter—
  - “the acquisition”,
  - “the employee”, and
  - “the employer”,have the meaning indicated in section 421B(8).
- (4) In this Chapter—
  - “restricted interest in securities”, and
  - “restricted securities”,have the meaning indicated in sections 423 and 424.]

*Status: Point in time view as at 07/04/2005.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 23 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## [<sup>F166</sup>CHAPTER 5

### SECURITIES OPTIONS

#### Textual Amendments

**F166** Pt. 7 Ch. 5 substituted (16.4.2003 for specified purposes and otherwise 1.9.2003 with effect in accordance with Sch. 22 para. 10(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 10\(1\)](#); S.I. 2003/1997, art. 2

#### *Introduction*

#### **471 Options to which this Chapter applies**

- (1) This Chapter applies to a securities option acquired by a person where the right or opportunity to acquire the securities option is available by reason of an employment of that person or any other person.
- (2) For the purposes of subsection (1) “employment” includes a former or prospective employment.
- (3) A right or opportunity to acquire a securities option made available by a person’s employer, or a person connected with a person’s employer, is to be regarded for the purposes of subsection (1) as available by reason of an employment of that person unless—
  - (a) the person by whom the right or opportunity is made available is an individual, and
  - (b) the right or opportunity is made available in the normal course of the domestic, family or personal relationships of that person.
- (4) A right or opportunity to acquire a securities option available by reason of holding employment-related securities is to be regarded for the purposes of subsection (1) as available by reason of the same employment as that by reason of which the right or opportunity to acquire the employment-related securities was available.
- (5) In this Chapter—
 

“the acquisition”, in relation to an employment-related securities option, means the acquisition of the employment-related securities option pursuant to the right or opportunity available by reason of the employment,

“the employment” means the employment by reason of which the right or opportunity to acquire the employment-related securities option is available (“the employee” and “the employer” being construed accordingly), and

“employment-related securities option” means a securities option to which this Chapter applies.

#### **472 Associated persons**

- (1) For the purposes of this Chapter the following are “associated persons” in relation to an employment-related securities option—
  - (a) the person who acquired the employment-related securities option on the acquisition,

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- (b) (if different) the employee, and
  - (c) any relevant linked person.
- (2) A person is a relevant linked person if—
- (a) that person (on the one hand), and
  - (b) either the person who acquired the employment-related securities option on the acquisition or the employee (on the other),  
[<sup>F167</sup>are or have been connected or (without being or having been connected) are or have been] members of the same household.
- (3) But a company which would otherwise be a relevant linked person is not if it is—
- (a) the employer,
  - (b) the person from whom the employment-related securities option was acquired, or
  - (c) the person by whom the right or opportunity to acquire the employment-related securities option was made available.

#### Textual Amendments

**F167** Words in s. 472(2) substituted (18.6.2004 with application in accordance with s. 90(5) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 90\(3\)](#)

### 473 Introduction to taxation of securities options

- (1) The starting-point is that section 475 contains an exemption from the liability to tax that might otherwise arise under—
- (a) Chapter 1 of Part 3 (earnings), or
  - (b) Chapter 10 of that Part (taxable benefits: residual liability to charge),
- when an employment-related securities option is acquired.
- (2) Liability to tax may arise, when securities are acquired pursuant to the employment-related securities option, under—
- (a) section 446B (charge on acquisition where market value of securities or interest artificially depressed),
  - (b) Chapter 3C of this Part (acquisition of securities for less than market value), or
  - (c) section 476 (acquisition of securities pursuant to securities option).
- (3) Liability to tax may also arise by virtue of section 476 when—
- (a) the employment-related securities option is assigned or released, or
  - (b) a benefit is received in connection with the employment-related securities option.
- (4) There are special rules relating to share options acquired under—
- (a) approved SAYE option schemes (see Chapter 7 of this Part),
  - (b) approved CSOP schemes (see Chapter 8 of this Part), or
  - (c) enterprise management incentives (see Chapter 9 of this Part).

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

- (1) This Chapter (apart from sections 473 and 483) does not apply in relation to an employment-related securities option if, at the time of the acquisition, the earnings from the employment 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 (apart from sections 473 and 483) does not apply in the case of a former employment if it would not apply if the acquisition had taken place in the last tax year in which the employment was held.
- (3) This Chapter (apart from sections 473 and 483) does not apply in the case of a prospective employment if it would not apply if the acquisition had taken place in the first tax year in which the employment is held.
- (4) Where the employment-related securities option is a new option (within the meaning of section 483), the references in this section to the acquisition are to the acquisition of the old option (within the meaning of that section).

#### *Tax relief on acquisition of option*

#### **475 No charge in respect of acquisition of option**

- (1) No liability to income tax arises in respect of the acquisition of an employment-related securities option.
- (2) Subsection (1) is subject to section 526 (approved CSOP schemes: charge where share option granted at a discount).

#### *Tax charge on post-acquisition chargeable events*

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

- [<sup>F168</sup>(1) If a chargeable event occurs in relation to an employment-related securities option, the taxable amount counts as employment income of the employee for the relevant tax year.
- (2) For this purpose—
  - (a) “chargeable event” has the meaning given by section 477,
  - (b) “the taxable amount” is the amount determined under section 478, and
  - (c) “the relevant tax year” is the tax year in which the chargeable event occurs.
- (3) Relief under section 481 or 482 (relief for secondary Class 1 contributions or special contribution met by employee) may be available against an amount counting as employment income under this section.]
- [<sup>F169</sup>(5) If the employee has been divested of the employment-related securities option by operation of law—
  - (a) income tax is charged on the amount determined under section 478, and
  - (b) the person liable for any tax so charged is the relevant person in relation to the chargeable event (see section 477(7)).]
- (6) This section is subject to—

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section 519 (approved SAYE option schemes: no charge in respect of exercise of share option by employee),  
section 524 (approved CSOP schemes: no charge in respect of exercise of share option by employee), and  
section 530 (enterprise management incentives: no charge on exercise by employee of option to acquire shares at market value).

#### Textual Amendments

**F168** S. 476(1)-(3) substituted for s. 476(1)-(4) (1.9.2004) by [Finance Act 2004 \(c. 12\)](#), s. 85(2), [Sch. 16 para. 3\(2\)](#); [S.I. 2004/1945](#), art. 2

**F169** S. 476(5) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 598](#) (with [Sch. 2](#))

### 477 Chargeable events

- (1) This section applies for the purposes of section 476 (charge on occurrence of chargeable event).
- (2) Any of the events mentioned in subsection (3) is a “chargeable event” in relation to the employment-related securities option unless it occurs on or after the death of the employee.
- (3) The events are—
  - (a) the acquisition of securities pursuant to the employment-related securities option by an associated person,
  - (b) the assignment for consideration of the employment-related securities option by an associated person otherwise than to another associated person or the release for consideration of the employment-related securities option by an associated person, or
  - (c) the receipt by an associated person of a benefit [<sup>F170</sup>in connection with the employment-related securities option (other than one within paragraph (a) or (b)).]
- (4) For the purposes of subsection (3)(a) securities are acquired at the time when a beneficial interest is acquired (and not, if different, the time when the securities are conveyed or transferred).
- (5) A benefit received on account of any disability (within the meaning of the Disability Discrimination Act 1995) of the employee is to be disregarded for the purposes of subsection (3)(c).
- (6) A benefit in money or money’s worth received in consideration for or otherwise in connection with—
  - (a) failing or undertaking not to acquire securities pursuant to the employment-related securities option, or
  - (b) granting or undertaking to grant to another person a right to acquire securities which are subject to the employment-related securities option or any interest in them,is to be regarded for the purposes of subsection (3)(c) as received in connection with the employment-related securities option.

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- (7) For the purposes of section 476(5) [<sup>F171</sup>(charge to income tax)] the relevant person in relation to a chargeable event is—
- (a) in the case of an event that is a chargeable event by virtue of subsection (3) (a), the person by whom the securities are acquired, and
  - (b) in the case of an event that is a chargeable event by virtue of subsection (3) (b) or (c), the person by whom the consideration or benefit is received.

#### Textual Amendments

**F170** Words in s. 477(3)(c) substituted (18.6.2004 with application in accordance with s. 90(5) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [s. 90\(4\)](#)

**F171** Words in s. 477(7) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [s. 883\(1\)](#), [Sch. 1 para. 599](#) (with [Sch. 2](#))

#### 478 Amount of charge

- (1) The taxable amount for the purposes of section 476 (charge on occurrence of chargeable event) is—

**AG - DA**

where—

AG is the amount of any gain realised on the occurrence of the chargeable event, and  
 DA is the total of any deductible amounts.

- (2) Section 479 explains what is the amount of any gain realised on the occurrence of a chargeable event.
- (3) Section 480 specifies what are deductible amounts.

#### 479 Amount of gain realised on occurrence of chargeable event

- (1) This section applies for the purposes of section 478 (amount of charge on occurrence of chargeable event).
- (2) The amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 477(3)(a) (acquisition of securities) is (subject to subsection (4))—

**MV - C**

- (3) In subsection (2)—

MV is the market value of the securities that are acquired at the time when they are acquired, and

C is the amount of any consideration given for the securities that are acquired.

- (4) But the amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 477(3)(a) (acquisition of securities) is calculated—
- (a) if section 531 (enterprise management incentives: limitation of charge on exercise of option to acquire shares below market value) applies, in accordance with that section, and



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- (b) if section 532 (enterprise management incentives: modified tax consequences following disqualifying events) applies, in accordance with that section.
- (5) The amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 477(3)(b) (assignment or release of option) is the amount of the consideration given for the assignment or release.
- (6) The amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 477(3)(c) (receipt of benefit in connection with option) is the amount or market value of the benefit.
- (7) But if—
  - (a) the consideration mentioned in subsection (5), or
  - (b) the benefit mentioned in subsection (6),consists (in whole or in part) in the provision of securities or an interest in securities the market value of which has been reduced by at least 10% as a result of things done otherwise than for genuine commercial purposes within the period of 7 years ending with the receipt of the consideration or benefit, its market value is to be taken to be what it would be but for the reduction.
- (8) The following are among the things that are, for the purposes of subsection (7), done otherwise than for genuine commercial purposes—
  - (a) anything done as part of a scheme or arrangement the main purpose, or one of the main purposes, of which is the avoidance of tax or national insurance contributions, and
  - (b) any transaction 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 a payment for group relief).
- (9) In subsection (8)(b)—
  - (a) “group” means a company and its 51% subsidiaries, and
  - (b) “group relief” has the same meaning as in section 402(6) of ICTA.

#### **480 Deductible amounts**

- (1) This section applies for the purposes of section 478 (amount of charge on occurrence of chargeable event).
- (2) The amount of—
  - (a) any consideration given for the acquisition of the employment-related securities option, and
  - (b) the amount of any expenses incurred in connection with the acquisition of securities, assignment, release or receipt which constitutes the chargeable event,is a deductible amount.
- (3) Where in consequence of—
  - (a) the acquisition of the employment-related securities option,
  - (b) the acquisition of securities pursuant to the employment-related securities option, or

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- (c) a transaction of which the acquisition of the employment-related securities option or the acquisition of securities pursuant to the employment-related securities option forms part,  
 there is a reduction in the market value of any employment-related securities to which an associated person is beneficially entitled, the amount of the reduction is to be treated for the purposes of subsection (2) as consideration (or additional consideration) given for the acquisition of the employment-related securities option.
- (4) If 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 employment-related securities option, so much of that amount as is attributable to the shares in question is a deductible amount.
- (5) The following are also deductible amounts—
  - (a) any amount that constituted earnings from the employment under Chapter 1 of Part 3 (earnings) in respect of the acquisition of the employment-related securities option,
  - (b) any amount that was treated as earnings from the employment under Chapter 10 of that Part (taxable benefits: residual liability to charge) in respect of the acquisition of the employment-related securities option, and
  - (c) the amount of any gain by a previous holder on an assignment of the employment-related securities option which would have been a deductible cost by virtue of subsection (2)(c) of section 479 (as originally enacted) on an exercise of the option at a time when that section was in force.
- (6) If there has been a previous chargeable event in relation to the employment-related securities option (or if section 476 or 477 as originally enacted applied to the option by virtue of an earlier event), so much of any deductible amount as was deducted in calculating the taxable amount on the occasion of that event is to be regarded as not being a deductible amount.

<sup>F172</sup>(7) .....

**Textual Amendments**  
**F172** S. 480(7) repealed (1.9.2004) by [Finance Act 2004 \(c. 12\)](#), s. 85(2), [Sch. 16 para. 3\(3\)](#), [Sch. 42 Pt. 2\(10\)](#); S.I. 2004/1945, art. 2

**481** [<sup>F173</sup>Relief for] secondary Class 1 contributions met by employee

- (1) [<sup>F174</sup>Relief is available under this section against an amount counting as employment income under section 476 if] —
  - (a) an agreement having effect under paragraph 3A of Schedule 1 to the Contributions and Benefits Act has been entered into allowing the secondary contributor to recover from the employee the whole or part of any secondary Class 1 contributions in respect of the gain, or
  - (b) an election having effect under paragraph 3B of Schedule 1 to that Act is in force which has the effect of transferring to the employee the whole or part of the liability to pay secondary Class 1 contributions in respect of the gain.
- (2) [<sup>F175</sup>The amount of the relief is the total of] —

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- (a) any amount that under the agreement referred to in subsection (1)(a) is recovered in respect of the gain by the secondary contributor before 5th June in the tax year following that in which the gain is realised, and
  - (b) the amount of any liability in respect of the gain that, by virtue of the election referred to in subsection (1)(b), has become the employee's liability.
- (3) If notice of withdrawal of approval of the election is given, the amount of any liability in respect of the gain for the purposes of subsection (2)(b) is limited to the amount of the liability met before 5th June in the tax year following that in which the gain is realised.
- (4) Subsection (1) does not apply in respect of a liability to pay Class 1 contributions which is prevented from arising by virtue of section 2(1)(a) of the Social Security Contributions (Share Options) Act 2001 (liability to pay Class 1 contributions in respect of gains replaced by liability to pay special contribution).
- [<sup>F176</sup>(4A) Relief under this section is given by way of deduction from the amount otherwise counting as employment income.
- (4B) Relief under this section does not affect the amount to be taken into account—
- (a) as employment income in determining contributions payable under the Contributions and Benefits Act, or
  - (b) as relevant employment income for the purposes of paragraph 3A or 3B of Schedule 1 to that Act.]

(5) In this section—

“approval”, in relation to an election, means approval by the Board of Inland Revenue under paragraph 3B of Schedule 1 to the Contributions and Benefits Act, and

“secondary contributor” has the same meaning as in that Act (see section 7).

#### Textual Amendments

- F173** Words in s. 481 heading substituted (1.9.2004) by [Finance Act 2004 \(c. 12\), s. 85\(2\), Sch. 16 para. 3\(4\)\(a\)](#); [S.I. 2004/1945, art. 2](#)
- F174** Words in s. 481(1) substituted (1.9.2004) by [Finance Act 2004 \(c. 12\), s. 85\(2\), Sch. 16 para. 3\(4\)\(b\)](#); [S.I. 2004/1945, art. 2](#)
- F175** Words in s. 481(2) substituted (1.9.2004) by [Finance Act 2004 \(c. 12\), s. 85\(2\), Sch. 16 para. 3\(4\)\(c\)](#); [S.I. 2004/1945, art. 2](#)
- F176** S. 481(4A)(4B) inserted (1.9.2004) by [Finance Act 2004 \(c. 12\), s. 85\(2\), Sch. 16 para. 3\(4\)\(d\)](#); [S.I. 2004/1945, art. 2](#)

#### 482 [<sup>F177</sup>Relief for] special contribution met by employee

- (1) [<sup>F178</sup>Relief is available under this section against an amount counting as employment income under section 476 if] conditions A to D are met.
- (2) Condition A is that a notice in respect the employment-related securities option was given to the Board of Inland Revenue in accordance with section 1 of the Social Security Contributions (Share Options) Act 2001 before 11th August 2001.
- (3) Condition B is that the person, or one of the persons, who gave that notice is a person who (apart from that Act) was liable, or would have become liable, by virtue of an

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election under paragraph 3B of Schedule 1 to the Contributions and Benefits Act, to pay secondary Class 1 contributions in respect of an event which is a chargeable event for the purposes of section 476.

- (4) Condition C is that that person became liable to pay a special contribution under section 2 of the Social Security Contributions (Share Options) Act 2001 in respect of the employment-related securities option.
- (5) Condition D is that that person met that liability before 11th August 2001 or before the end of such further period as the Board of Inland Revenue directed under section 2(5) of that Act.
- [<sup>F179</sup>(6) The amount of the relief is the amount of the liability referred to in subsection (4).
- (7) Relief under this section is given by way of deduction from the amount otherwise counting as employment income.]

#### Textual Amendments

**F177** Words in s. 482 heading substituted (1.9.2004) by [Finance Act 2004 \(c. 12\)](#), s. 85(2), [Sch. 16 para. 3\(5\)\(a\)](#); [S.I. 2004/1945](#), art. 2

**F178** Words in s. 482(1) substituted (1.9.2004) by [Finance Act 2004 \(c. 12\)](#), s. 85(2), [Sch. 16 para. 3\(5\)\(b\)](#); [S.I. 2004/1945](#), art. 2

**F179** S. 482(6)(7) added (1.9.2004) by [Finance Act 2004 \(c. 12\)](#), s. 85(2), [Sch. 16 para. 3\(5\)\(c\)](#); [S.I. 2004/1945](#), art. 2

#### *Supplementary provisions*

### 483 Application of this Chapter where option exchanged for another

- (1) This section applies if—
  - (a) the employment-related securities option (the “old option”) is assigned or released, and
  - (b) the whole or part of the consideration for the assignment or release consists of or includes another securities option (the “new option”).
- (2) For the purposes of section 479(5) (amount of gain realised by assigning or releasing option) the new option is not to be treated as consideration given for the assignment or release of the old option.
- (3) This Chapter applies to the new option as it applies to the old option.
- (4) For the purposes of section 480(2) (consideration for acquisition of option) the amount of the consideration given for the acquisition of the new option is to be treated as being the sum of—
  - (a) the amount by which the amount of the consideration given for the acquisition of the old option exceeds the amount of any consideration given for the assignment or release of the old option, apart from the new option, and
  - (b) any valuable consideration given for the acquisition of the new option, apart from the old option.

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- (5) Two or more transactions are to be treated for the purposes of subsection (1) as a single transaction by which one option is assigned for a consideration which consists of or includes another option if—
- (a) the transactions result in—
    - (i) a person ceasing to hold an option, and
    - (ii) that person or a connected person coming to hold another option, and
  - (b) one or more of the transactions is effected under arrangements to which two or more persons holding options, in respect of which there may be liability to tax under this Chapter, are parties.
- (6) Subsection (5) applies regardless of the order in which the assignments and the acquisition occur.

#### 484 Definitions

- (1) In this Chapter—  
“securities”, and  
“securities option”,  
have the meaning indicated in section 420.
- (2) In this Chapter “market value” has the meaning indicated in section 421(1).
- (3) For the purposes of this Chapter sections 421(2) and 421A apply for determining the amount of consideration given for anything.
- (4) In this Chapter “employment-related securities” has the same meaning as in Chapter 1 of this Part (see section 421B(8)).
- (5) In this Chapter—  
“the acquisition”,  
“the employee”,  
“the employer”,  
“the employment”, and  
“employment-related securities option”,  
have the meaning indicated in section 471(5).
- (6) In this Chapter “associated person” has the meaning indicated in section 472.
- (7) In this Chapter—  
“secondary Class 1 contributions” has the same meaning as in the Contributions and Benefits Act (see section 1 of that Act),<sup>F180</sup> ...  
<sup>F180</sup> ...]

#### Textual Amendments

**F180** Words in s. 484(7) repealed (1.9.2004) by Finance Act 2004 (c. 12), s. 85(2), Sch. 16 para. 7(1), Sch. 42 Pt. 2(10); S.I. 2004/1945, art. 2

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### *Supplementary provisions*

**F166 485 Application of this Chapter where share option exchanged for another**

.....

**F166 486 Duty to notify matters relating to share options**

.....

**F166 487 Minor definitions**

.....

## CHAPTER 6

### APPROVED SHARE INCENTIVE PLANS

#### *Introduction*

**488 Approved share incentive plans (SIPs)**

- (1) This Chapter provides—
  - (a) for the approval of share incentive plans (“SIPs”) by the Inland Revenue,
  - (b) for exemptions from income tax in connection with shares obtained under those plans,
  - (c) for amounts to count as employment income in certain circumstances in connection with such plans, and
  - (d) for the making of PAYE deductions in connection with such amounts.
- (2) Schedule 2 contains the requirements that have to be met for a SIP to be approved, together with—
  - (a) the approval procedure, and
  - (b) provisions relating to the administration and operation of a SIP.
- (3) The provisions of—
  - (a) this and the following sections of this Chapter,
  - (b) Schedule 2, and
  - (c) the provisions mentioned in section 515 (tax advantages and charges under other Acts),
 together constitute “the SIP code”.
- (4) In the SIP code—
 

“approved” means approved by the Inland Revenue under Schedule 2, and “approval” has a corresponding meaning;

“PAYE deduction” means a deduction required by PAYE regulations;

a “share incentive plan” (or “SIP” for short) means a plan established by a company providing—

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- (a) for shares to be appropriated to employees without payment (“free shares”), or
  - (b) for shares to be acquired on behalf of employees out of sums deducted from their salary (“partnership shares”).
- (5) Other expressions used in the SIP code and contained in the index at the end of Schedule 2 have the meaning indicated by the index.

*Scope of tax advantages*

**489 Operation of tax advantages in connection with approved SIP**

- (1) Sections 490 to 499 apply for income tax purposes in connection with shares awarded under an approved SIP.
- (2) But those sections do not apply to an individual if, at the time of the award of shares in question, the earnings from the eligible employment are not (or would not be if there were any) general earnings to which any of the charging provisions of Chapter 4 or 5 of Part 2 apply.
- (3) “The eligible employment” means the employment which results in the individual meeting the employment requirement in relation to the plan.
- [<sup>F181</sup>(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.]

**Textual Amendments**

**F181** S. 489(4) inserted (18.6.2004 with effect in accordance with s. 88(11)-(13) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 88\(4\)](#)

*Tax advantages connected with award of shares*

**490 No charge on award or acquisition of shares: general**

- (1) This section applies—
  - (a) on the award to an employee of free, matching or partnership shares under the plan, or
  - (b) on the acquisition on behalf of an employee of dividend shares under the plan.
- (2) The employee is not liable to income tax on the value of the beneficial interest in the shares that passes to the employee at the time of the award or acquisition.

<sup>F182</sup>**491 No charge on award of shares as taxable benefit**

.....

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**Textual Amendments**

**F182** S. 491 repealed (with effect in accordance with Sch. 22 para. 26(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 26\(1\)](#), [Sch. 43 Pt. 3\(4\)](#)

**492 No charge on partnership share money deducted from salary**

- (1) An employee is not liable to income tax under Part 2 on any amount of the employee’s salary which is deducted as partnership share money under a partnership share agreement.
- (2) But the deduction of partnership share money is to be disregarded for the purpose of ascertaining—
  - (a) the amount of the employee’s remuneration for the purposes of Chapter 1 of Part 14 of ICTA (retirement benefit schemes), or
  - (b) the amount of the employee’s relevant earnings for the purposes of Chapter 3 or 4 of that Part of that Act (retirement annuities or personal pension schemes).

**493 No charge on acquisition of dividend shares**

<sup>F183</sup>(1) .....

<sup>F183</sup>(2) .....

- (3) Section 234A(4) of ICTA (information relating to distributions to be provided by nominee) does not apply to any amount applied by the trustees in acquiring dividend shares on behalf of a participant.

[<sup>F184</sup>(3A) For the exemption of such amounts from income tax, see section 770 of ITTOIA 2005 (amounts applied by SIP trustees acquiring dividend shares or retained for reinvestment).]

<sup>F185</sup>(4) .....

- (5) Subsection (3) is subject to paragraph 80(4)(c) of Schedule 2 (information required where dividend shares cease to be subject to plan).

**Textual Amendments**

**F183** S. 493(1)(2) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 600\(2\)](#), [Sch. 3](#) (with [Sch. 2](#))

**F184** S. 493(3A) inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 600\(3\)](#) (with [Sch. 2](#))

**F185** S. 493(4) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 600\(2\)](#), [Sch. 3](#) (with [Sch. 2](#))

*Tax advantages connected with holding of shares*

**<sup>F186</sup>494 No charge on removal of restrictions applying to shares**

.....



*Status: Point in time view as at 07/04/2005.*

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#### Textual Amendments

**F186** S. 494 repealed (with effect in accordance with Sch. 22 para. 27(2) of the amending Act and otherwise 1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 27\(1\)](#), [Sch. 43 Pt. 3\(4\)](#); S.I. 2003/1997, art. 2

#### <sup>F187</sup>**495 No charge on increase in value of shares of dependent subsidiary**

.....

#### Textual Amendments

**F187** S. 495 repealed (16.4.2003 with effect in accordance with Sch. 22 para. 28(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 28\(1\)](#), [Sch. 43 Pt. 3\(4\)](#)

#### <sup>F188</sup>**496 No charge on cash dividend retained for reinvestment**

For the exemption from income tax of amounts retained under paragraph 68(2) of Schedule 2 (amount of cash dividend not reinvested), see section 770 of ITTOIA 2005 (amounts applied by SIP trustees acquiring dividend shares or retained for reinvestment).]

#### Textual Amendments

**F188** S. 496 substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 601](#) (with [Sch. 2](#))

*Tax advantages connected with shares ceasing to be subject to plan*

#### **497 Limitations on charges on shares ceasing to be subject to plan**

- (1) No liability to income tax arises on free or matching shares ceasing to be subject to the plan, except as provided by—
  - (a) section 505 (charge on free or matching shares ceasing to be subject to plan), or
  - (b) section 507 (charge on disposal of beneficial interest during holding period).
- (2) No liability to income tax arises on partnership shares ceasing to be subject to the plan, except as provided by section 506 (charge on partnership shares ceasing to be subject to plan).
- (3) No liability to income tax arises on dividend shares ceasing to be subject to the plan, except <sup>F189</sup>under Chapter 3 or 4 of Part 4 of ITTOIA 2005 (dividends etc. from UK or non-UK resident companies etc.) as a result of section 394(2) or 407(2) of that Act (distribution or dividend payment when dividend shares cease to be subject to plan).]

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### Textual Amendments

**F189** Words in s. 497(3) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 602](#) (with [Sch. 2](#))

## 498 No charge on shares ceasing to be subject to plan in certain circumstances

- (1) A participant is not liable to income tax on shares ceasing to be subject to the plan if—
- (a) they cease to be so subject on the participant ceasing to be in relevant employment, and
  - (b) subsection (2) applies.
- (2) This subsection applies if the participant ceases to be in relevant employment—
- (a) because of injury or disability,
  - (b) on being dismissed by reason of redundancy,
  - (c) by reason of a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 1981 (S.I. 1981/1794) apply,
  - (d) if the relevant employment is employment by an associated company (see paragraph 95(2) of Schedule 2), by reason of a change of control or other circumstances ending that company's status as an associated company,
  - (e) by reason of the participant's retirement on or after reaching the specified retirement age (see paragraph 98 of Schedule 2), or
  - (f) on the participant's death.

*Tax advantages: supplementary*

## 499 No charge in respect of incidental expenditure

An employee is not liable to income tax in respect of incidental expenditure of—

- (a) the trustees,
  - (b) the company which established the plan, or
  - (c) (if different) the employer,
- in operating the plan.

*Scope of tax charges*

## 500 Operation of tax charges in connection with approved SIP

- (1) Sections 501 to 508 apply for income tax purposes in connection with shares awarded under an approved SIP.
- (2) But those sections do not apply to an individual if, at the time of the award of shares in question, the earnings from the eligible employment are not (or would not be if there were any) general earnings to which any of the charging provisions of Chapter 4 or 5 of Part 2 apply.
- (3) "The eligible employment" means the employment which results in the individual meeting the employment requirement in relation to the plan.

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### *Charges connected with holding of shares*

#### **501 Charge on capital receipts in respect of plan shares**

- (1) This section applies if conditions A and B are met.
- (2) Condition A is that a capital receipt is received by a participant in respect of, or by reference to, any of the participant's plan shares.
- (3) Condition B is that the plan shares in respect of, or by reference to, which the capital receipt is received are—
  - (a) free, matching or partnership shares that were awarded to the participant less than 5 years before the participant received the capital receipt, or
  - (b) dividend shares that were acquired on behalf of the participant less than 3 years before the participant received the capital receipt.
- (4) If this section applies, the amount or value of the capital receipt counts as employment income of the participant for the relevant tax year.
- (5) The “relevant tax year” is the tax year in which the participant receives the capital receipt.
- (6) This section does not apply if the capital receipt is received by the participant's personal representatives after the death of the participant.
- (7) Section 502 explains what is meant by a “capital receipt”.

#### **502 Meaning of “capital receipt” in section 501**

- (1) This section applies for determining whether any money or money's worth is a “capital receipt” for the purposes of section 501.
- (2) The general rule is that any money or money's worth is a “capital receipt” for the purposes of section 501.
- (3) The general rule is subject to the following exceptions.
- (4) Money or money's worth is not a capital receipt for the purposes of section 501 to the extent that—
  - (a) it constitutes income in the hands of the recipient for the purposes of income tax or would do so but for sections 489 to 498 (SIPs: tax advantages) [<sup>F190</sup>or section 770 of ITTOIA 2005 (exemption for amounts applied by SIP trustees acquiring dividend shares or retained for reinvestment)],
  - (b) it consists of the proceeds of disposal of the plan shares mentioned in section 501, or
  - (c) it consists of new shares within the meaning of paragraph 87 of Schedule 2 (company reconstructions).
- (5) If, as a result of a direction given by or on behalf of the participant for the purposes of paragraph 77 of Schedule 2 (power of trustees to raise funds to subscribe for rights issues), the trustees—
  - (a) dispose of some of the rights under a rights issue, and
  - (b) use the proceeds of that disposal to exercise other such rights,

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the money or money's worth constituting the proceeds of that disposal is not a capital receipt for the purposes of section 501.

#### **Textual Amendments**

**F190** Words in s. 502(4)(a) inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 603](#) (with [Sch. 2](#))

### **503 Charge on partnership share money paid over to employee**

- (1) Any amount paid over to an individual under any of the provisions of Schedule 2 mentioned in subsection (2) counts as employment income of the individual for the relevant tax year.
- (2) The provisions are—
  - paragraph 46(5) (deductions in excess of permitted maximum amount),
  - paragraph 50(5)(b) or paragraph 52(6)(b) (surplus partnership share money remaining after acquisition of shares),
  - paragraph 52(7) (partnership share money paid over on individual ceasing to be in relevant employment),
  - paragraph 52(8) (partnership share money paid over where accumulation period brought to an end by event specified in plan),
  - paragraph 55(3) (partnership share money paid over on withdrawal from partnership share agreement), or
  - paragraph 56 (partnership share money paid over on withdrawal of plan approval or termination of plan).
- (3) The “relevant tax year” is the tax year in which the amount is paid over.

### **504 Charge on cancellation payments in respect of partnership share agreement**

- (1) This section applies if an individual who has entered into a partnership share agreement receives any money or money's worth in respect of the cancellation of the agreement.
- (2) The amount of the money or the value of the money's worth counts as employment income of the individual for the relevant tax year.
- (3) The “relevant tax year” is the tax year in which the individual receives the money or money's worth.

*Charges connected with shares ceasing to be subject to plan*

### **505 Charge on free or matching shares ceasing to be subject to plan**

- (1) When free or matching shares cease to be subject to the plan, there may be an amount that counts as employment income of the participant depending on the period that has elapsed between—
  - (a) the date when the shares were awarded to the participant (“the award date”), and
  - (b) the date when they cease to be subject to the plan (“the exit date”).

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- (2) If the period is less than 3 years, the market value of the shares at the exit date counts as employment income of the participant for the relevant tax year (see subsection (5)).
  - (3) If the period is 3 years or more but less than 5 years, whichever is the lesser of—
    - (a) the market value of the shares at the award date, and
    - (b) the market value of the shares at the exit date,counts as employment income of the participant for the relevant tax year (see subsection (5)).
  - (4) Where—
    - (a) subsection (3) applies, and
    - (b) the applicable amount is the market value of the shares at the award date,the tax due is reduced by the amount or aggregate amount of any tax paid by virtue of section 501 (charge on capital receipts in respect of plan shares) on any capital receipts in respect of the shares.
- [<sup>F191</sup>(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.]
- (5) The “relevant tax year” is the tax year in which the exit date falls.
  - (6) No liability to tax arises by virtue of this section—
    - (a) on the forfeiture of free or matching shares,
    - (b) if section 498 (no charge on shares ceasing to be subject to plan in certain circumstances) applies, or
    - (c) if section 507 (charge on disposal of beneficial interest in holding period) applies.

#### Textual Amendments

**F191** S. 505(4A) inserted (18.6.2004 with effect in accordance with s. 88(11)-(13) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 88\(5\)](#)

## 506 Charge on partnership shares ceasing to be subject to plan

- (1) When partnership shares cease to be subject to the plan, there may be an amount that counts as employment income of the participant depending on the period that has elapsed between—
  - (a) the acquisition date in respect of those shares (as defined by paragraph 50(4) or, as the case may be, paragraph 52(5) of Schedule 2), and
  - (b) the date when they cease to be subject to the plan (“the exit date”).
- (2) If the period is less than 3 years, the market value of the shares at the exit date counts as employment income of the participant for the relevant tax year (see subsection (5)).
- (3) If the period is 3 years or more but less than 5 years, whichever is the lesser of—
  - (a) the amount of partnership share money used to acquire the shares, and
  - (b) the market value of the shares at the exit date,counts as employment income of the participant for the relevant tax year (see subsection (5)).

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(4) Where—

- (a) subsection (3) applies, and
- (b) the applicable amount is the amount of partnership share money used to acquire the shares,

the tax due is reduced by the amount or aggregate amount of any tax paid by virtue of section 501 (charge on capital receipts in respect of plan shares) on any capital receipts in respect of the shares.

[<sup>F192</sup>(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.]

(5) The “relevant tax year” is the tax year in which the exit date falls.

(6) No liability to income tax arises by virtue of this section if section 498 (no charge on shares ceasing to be subject to plan in certain circumstances) applies.

**Textual Amendments**

**F192** S. 506(4A) inserted (18.6.2004 with effect in accordance with s. 88(11)-(13) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 88\(5\)](#)

**507 Charge on disposal of beneficial interest during holding period**

(1) This section applies if—

- (a) free or matching shares cease to be subject to the plan at any time during the holding period for those shares, and
- (b) this occurs as a result of the participant assigning, charging or otherwise disposing of the participant’s beneficial interest in the shares in breach of obligations under paragraph 36(1)(b) of Schedule 2 (restrictions relating to disposals within holding period).

(2) The market value of the shares at the date when they cease to be subject to the plan counts as employment income of the participant for the relevant tax year.

(3) The “relevant tax year” is the tax year in which that date falls.

**508 Identification of shares ceasing to be subject to plan**

(1) For the purpose of determining any liability to tax arising by virtue of the SIP code in respect of any of a participant’s shares ceasing to be subject to the plan—

- (a) shares are to be taken as ceasing to be subject to the plan in the order in which they were awarded to the participant under the plan, and
- (b) where shares are awarded to the participant on the same day, the shares are to be treated as ceasing to be subject to the plan in the order which gives rise to the lowest charge to income tax on the participant.

(2) For the purposes of subsection (1) dividend shares are “awarded” to a participant when the trustees acquire them on behalf of, or appropriate them to, the participant.

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## PAYE

### 509 Modification of section 696 where charge on shares ceasing to be subject to plan

- (1) Where—
  - (a) as a result of shares ceasing to be subject to an approved SIP, there is an amount that counts as employment income of a participant by virtue of the SIP code, and
  - (b) the shares are readily convertible assets,  
section 696 (readily convertible assets) applies as follows.
- (2) Section 696 applies as if the participant (“P”) were being provided with PAYE income in the form of those shares—
  - (a) at the time when the shares cease to be subject to the plan, and
  - (b) in respect of the relevant employment in which P is employed at that time (or, if P is not then employed in relevant employment, the relevant employment in which P was last employed before that time).
- (3) In addition, subsection (2) of section 696 applies as if the reference in that subsection to the amount of income likely to be PAYE income in respect of the provision of the asset were a reference to the amount which is likely to count as employment income by virtue of the SIP code as a result of the shares ceasing to be subject to the plan.
- (4) In this section “readily convertible asset” has the same meaning as in section 696 (see sections 701 and 702), but this is subject to <sup>F193</sup>subsections (5) and (6)].
- (5) In determining for the purposes of this section (and of section 696 in its application in accordance with this section) whether the shares are readily convertible assets, any market for the shares which—
  - (a) is created by virtue of the trustees acquiring shares for the purposes of the plan, and
  - (b) exists solely for the purposes of the plan,  
is to be disregarded.
- <sup>F194</sup>(6) In determining for the purposes of this section (and of section 696 in its application in accordance with this section) whether the shares are readily convertible assets, section 702 has effect with the omission of subsections (5A) to (5D).]

#### Textual Amendments

**F193** Words in s. 509(4) substituted (10.7.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 11\(2\)](#)

**F194** S. 509(6) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 11\(3\)](#)

### 510 Payments by trustees to employer company on shares ceasing to be subject to plan

- (1) This section applies if, as a result of any shares (“the relevant shares”) ceasing to be subject to an approved SIP—
  - (a) there is an amount that counts as employment income of a participant by virtue of the SIP code, and
  - (b) an obligation to make a PAYE deduction arises in respect of that amount.

*Status: Point in time view as at 07/04/2005.*

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- (2) The trustees must pay to the employer company a sum which is sufficient to enable the employer company to discharge that obligation.
- (3) Subsection (2) is subject to—
  - (a) subsection (4), and
  - (b) section 511 (PAYE deductions to be made by trustees on shares ceasing to be subject to plan).
- (4) Subsection (2) only applies if, or to the extent that, the plan does not require the participant to pay the employer company a sum which is sufficient to discharge the obligation mentioned in subsection (1)(b).
- (5) Section 710(1) (notional payments: accounting for tax) has effect as if it required the deduction of income tax to be made from any sum or sums received by the employer company—
  - (a) from the trustees under subsection (2), or
  - (b) from the participant in accordance with a requirement of the plan, as mentioned in subsection (4).
- (6) After making the necessary PAYE deduction from the sum or sums received as mentioned in subsection (5), the employer company must pay any remaining amount to the participant.
- (7) In this section “the employer company” means—
  - (a) the company which employs the participant in relevant employment at the time when the relevant shares cease to be subject to the plan, or
  - (b) if the participant is not then employed in relevant employment, the company which last employed the participant in relevant employment before that time, so long as that company is one to which PAYE regulations apply at that time.

## **511 PAYE deductions to be made by trustees on shares ceasing to be subject to plan**

- (1) This section applies if, as a result of any shares ceasing to be subject to an approved SIP—
  - (a) there is an amount that counts as employment income of a participant by virtue of the SIP code, and
  - (b) condition A or B is met.
- (2) Condition A is that the Inland Revenue—
  - (a) are of the opinion that it is impracticable for the employer company (within the meaning of section 510) to make a PAYE deduction, and
  - (b) accordingly direct that this section is to apply.
- (3) Condition B is that there is no company that qualifies as the employer company (within the meaning of that section).
- (4) If this section applies—
  - (a) section 510(2) does not apply, and
  - (b) the trustees must make a PAYE deduction in respect of the taxable equivalent as if the participant were a former employee of the trustees.
- (5) The “taxable equivalent” means an amount equal to that mentioned in subsection (1).



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(6) If this section applies, section 689 (employee of non-UK employer) does not apply.

## **512 Disposal of beneficial interest by participant**

- (1) This section applies if—
  - (a) a participant (“P”) disposes of P’s beneficial interest in any of P’s plan shares to the trustees, and
  - (b) the trustees are, as a result of paragraph 6 of Schedule 7D to TCGA 1992 (deemed disposal by trustees on disposal of beneficial interest), treated as having disposed of the shares in question.
- (2) If this section applies, sections 510 and 511 apply as if the consideration payable by the trustees to the participant on the disposal had been received by the trustees as the proceeds of disposal of plan shares.

## **513 Capital receipts: payments by trustees to employer company**

- (1) This section applies if the trustees receive a sum of money which constitutes (or forms part of) a capital receipt which, by virtue of the SIP code, counts as employment income of a participant when it is received by the participant.
- (2) Out of that sum of money the trustees must pay to the employer company an amount equal to the amount of employment income.
- (3) The employer company must then pay over that amount to the participant, but when doing so must make a PAYE deduction.
- (4) This section is subject to section 514 (capital receipts: deductions to be made by trustees).
- (5) In this section “the employer company” means—
  - (a) the company which employs the participant in relevant employment at the time when the trustees receive the sum mentioned in subsection (1), or
  - (b) if the participant is not then employed in relevant employment, the company which last employed the participant in relevant employment before that time, so long as that company is one to which PAYE regulations apply at that time.

## **514 Capital receipts: PAYE deductions to be made by trustees**

- (1) This section applies if—
  - (a) the trustees receive a sum of money which constitutes (or forms part of) a capital receipt which, by virtue of the SIP code, counts as employment income of a participant when it is received by the participant, and
  - (b) either condition A or B is met.
- (2) Condition A is that the Inland Revenue—
  - (a) are of the opinion that it is impracticable for the employer company (within the meaning of section 513) to make a PAYE deduction, and
  - (b) accordingly direct that this section is to apply.
- (3) Condition B is that there is no company that qualifies as the employer company (within the meaning of that section).

*Status: Point in time view as at 07/04/2005.*

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- (4) If this section applies, the trustees must, when paying the capital receipt over to the participant, make a PAYE deduction in respect of the taxable equivalent as if the participant were a former employee of the trustees.
- (5) The “taxable equivalent” means an amount equal to the amount which counts as employment income as mentioned in subsection (1)(a).
- (6) If this section applies, section 689 (employee of non-UK employer) does not apply.

#### *Other tax consequences*

### 515 Tax advantages and charges under other Acts

- (1) The following provisions of ICTA relate to SIPs—
  - <sup>F195</sup>(a) .....
  - (b) sections 686B and 686C (which provide for section 686 of that Act (accumulation and discretionary trusts: special rates of tax) not to apply to income of the trustees of an approved SIP in certain circumstances), and
  - (c) Schedule 4AA (which makes provision about deductions allowed in calculating trade profits for corporation tax purposes in respect of certain of a company’s expenses relating to—
    - (i) providing shares for the purposes of an approved SIP, or
    - (ii) the establishment or operation of the plan).
- (2) SIPs are also dealt with in—
  - (a) Part 1 of Schedule 7D to TCGA 1992 (which provides for relief from capital gains tax for the trustees and for participants in relation to an approved SIP in certain circumstances, including where shares cease to be subject to the plan), <sup>F196</sup> ...
  - (b) section 95 of FA 2001 (which contains relief from stamp duty and stamp duty reserve tax for transfers of partnership or dividend shares)]<sup>F197</sup>, and
  - (c) sections 392 to 395 and 405 to 408 of ITTOIA 2005 (SIPs: special rules for charges under Chapters 3 and 4 of Part 4 of that Act (dividends etc. from UK or non-UK resident companies etc.)) and section 770 of that Act (exemption for amounts applied by SIP trustees acquiring dividend shares or retained for reinvestment).]
- (3) The references in this section to ICTA, TCGA 1992 and FA 2001 are to those Acts as amended by Schedule 6 to this Act.

#### **Textual Amendments**

**F195** S. 515(1)(a) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 604\(2\)](#), [Sch. 3](#) (with [Sch. 2](#))

**F196** Word in s. 515(2)(a) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 604\(3\)](#), [Sch. 3](#) (with [Sch. 2](#))

**F197** S. 515(2)(c) and word inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 604\(4\)](#) (with [Sch. 2](#))

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## CHAPTER 7

### APPROVED SAYE OPTION SCHEMES

#### Introduction

#### 516 Approved SAYE option schemes

- (1) This Chapter provides—
  - (a) for the approval of SAYE option schemes by the Inland Revenue, and
  - (b) for exemptions from income tax in connection with share options granted under those schemes.
- (2) Schedule 3 contains the requirements that have to be met for an SAYE option scheme to be approved, together with the approval procedure.
- (3) The provisions of—
  - (a) this and the following sections of this Chapter,
  - (b) Schedule 3, and
  - (c) Part 2 of Schedule 7D to TCGA 1992 (approved SAYE option schemes: amount of consideration on exercise of option),together constitute “the SAYE code”.
- (4) In the SAYE code—

“approved” means approved by the Inland Revenue under Schedule 3 (see paragraph 1 of the Schedule);

“SAYE option scheme” means a scheme (commonly referred to as an SAYE share option scheme) which is established by a company and provides—

  - (a) for share options to be granted to employees and directors, and
  - (b) for the shares acquired by the exercise of the share options to be paid for in the way mentioned in paragraph 24 of Schedule 3 (payments for shares to be linked to <sup>F198</sup>approved savings arrangements] );

“share option” means a right to acquire shares in a company;

“shares” includes stock.
- (5) Other expressions used in the SAYE code and contained in the index at the end of Schedule 3 have the meaning indicated by the index.

#### Textual Amendments

**F198** Words in s. 516(4) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 605](#) (with [Sch. 2](#))

#### 517 Share options to which this Chapter applies

- (1) This Chapter applies to a share option granted to an individual—
  - (a) in accordance with the provisions of an approved SAYE option scheme, and
  - (b) by reason of the individual’s office or employment as a director or employee of a company.

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- (2) The individual may be a director or employee of the company whose shares are the subject of the share option, or of some other company.

*Tax advantages*

**<sup>F199</sup>518 No charge in respect of receipt of option**

.....

**Textual Amendments**

**F199** S. 518 repealed (1.9.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 29\(1\)\(2\), Sch. 43 Pt. 3\(4\); S.I. 2003/1997, art. 2](#)

**519 No charge in respect of exercise of option**

- (1) No liability to income tax arises in respect of the exercise of the share option if—
- (a) the individual exercises it in accordance with the provisions of the SAYE option scheme at a time when the scheme is approved, <sup>F200</sup> ...
  - (b) condition A or B is met [<sup>F201</sup>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.]

(2) Condition A is that the option is exercised on or after the third anniversary of the date on which it was granted.

- (3) Condition B is that the option—
- (a) is exercised before the third anniversary of the date on which it was granted, and
  - (b) is so exercised otherwise than by virtue of a provision included in the scheme under—
    - paragraph 34(5) of Schedule 3 (exercise of option where scheme-related employment ends), or
    - paragraph 37 of that Schedule (exercise of option where certain company events occur).

<sup>F202</sup>(4) .....

- (5) In Schedule 3—
- (a) paragraph 32 provides for the exercise of an option where the holder has died, and
  - (b) paragraph 42(3) provides for an SAYE option scheme to be treated as approved at the time when an option is exercised even though approval of the scheme has been previously withdrawn.

**Textual Amendments**

**F200** Word in s. 519(1)(a) repealed (with effect in accordance with s. 88(11) of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 42 Pt. 2\(11\)](#)

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- F201** S. 519(1)(c) and word inserted (18.6.2004 with effect in accordance with s. 88(11)-(13) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 88\(6\)](#)
- F202** S. 519(4) repealed (1.9.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 30\(1\)\(2\), Sch. 43 Pt. 3\(4\); S.I. 2003/1997, art. 2](#)

**F203 520 No charge in respect of post-acquisition benefits**

.....

**Textual Amendments**

- F203** S. 520 repealed (16.4.2003 with effect in accordance with Sch. 22 para. 31(2) of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 31\(1\), Sch. 43 Pt. 3\(4\)](#)

**CHAPTER 8**

APPROVED CSOP SCHEMES

*Introduction*

**521 Approved CSOP schemes**

- (1) This Chapter provides—
- (a) for the approval of CSOP schemes by the Inland Revenue,
  - (b) for exemptions from income tax in connection with share options granted under those schemes, and
  - (c) for amounts to count as employment income in certain circumstances in connection with such options.
- (2) Schedule 4 contains the requirements that have to be met for a CSOP scheme to be approved, together with the approval procedure.
- (3) The provisions of—
- (a) this and the following sections of this Chapter,
  - (b) Schedule 4, and
  - (c) Part 3 of Schedule 7D to TCGA 1992 (approved CSOP schemes: amount of consideration on exercise of option),
- together constitute “the CSOP code”.
- (4) In the CSOP code—
- “approved” means approved by the Inland Revenue under Schedule 4 (see paragraph 1 of the Schedule);
- “CSOP scheme” means a scheme (commonly referred to as a company share option plan) which—
- (a) is established by a company,
  - (b) provides for share options to be granted to employees and directors, and
  - (c) is not an SAYE option scheme (within the meaning of the SAYE code: see section 516(4));

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“share option” means a right to acquire shares in a company;  
 “shares” includes stock.

- (5) Other expressions used in the CSOP code and contained in the index at the end of Schedule 4 have the meaning indicated by the index.

## 522 Share options to which this Chapter applies

- (1) This Chapter applies to a share option granted to an individual—
- (a) in accordance with the provisions of an approved CSOP scheme, and
  - (b) by reason of the individual’s office or employment as a director or employee of a company.
- (2) The individual may be a director or employee of the company whose shares are the subject of the share option, or of some other company.

### *Tax advantages*

## <sup>F204</sup>523 No charge in respect of receipt of option

.....

### **Textual Amendments**

**F204** S. 523 repealed (1.9.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 32\(1\)\(2\), Sch. 43 Pt. 3\(4\); S.I. 2003/1997, art. 2](#)

## 524 No charge in respect of receipt of option

- (1) No liability to income tax arises in respect of the exercise of the share option if—
- (a) the individual exercises it in accordance with the provisions of the CSOP scheme at a time when the scheme is approved, <sup>F205</sup>...
  - <sup>F206</sup>(b) Condition A or B is met <sup>F207</sup>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.]

<sup>F208</sup>(2) Condition A is that the option is exercised—

- (a) on or after the third anniversary of the date on which it was granted, but
- (b) not later than the tenth anniversary of that date.

(2A) Condition B is that the option—

- (a) is exercised before the third anniversary of the date on which it was granted, and
- (b) is so exercised by virtue of a provision included in the scheme under paragraph 24 of Schedule 4 (exercise of options after ceasing to be director or employee) in circumstances in which subsection (2B) applies.

(2B) This subsection applies if the individual exercising the option—

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- (a) has ceased to be a full-time director or qualifying employee of the scheme organiser (or, in the case of a group scheme, a constituent company) because of injury, disability, redundancy or retirement, and
- (b) exercises the option within 6 months of the day on which he ceases to be such a director or employee.

(2C) In subsection (2B)—

“redundancy” means redundancy within the meaning of ERA 1996 or ER(NI)O 1996, and

“retirement” means retirement on or after reaching a retirement age specified in the scheme.]

<sup>F208</sup>(3) . . . . .

<sup>F209</sup>(4) . . . . .

(5) Paragraph 25 of Schedule 4 provides for the exercise of an option where the holder has died.

**Textual Amendments**

- F205** Word in s. 524(1)(a) repealed (with effect in accordance with s. 88(11) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(11\)](#)
- F206** S. 524(1)(b) substituted (with effect in accordance with Sch. 21 para. 14(5) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 14\(2\)](#)
- F207** S. 524(1)(c) and preceding word inserted (18.6.2004 with effect in accordance with s. 88(11)-(13) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [s. 88\(7\)](#)
- F208** S. 524(2)-(2C) substituted for s. 524(2)(3) (with effect in accordance with Sch. 21 para. 14(5) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 14\(3\)](#)
- F209** S. 524(4) repealed (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 33\(1\)\(2\)](#), [Sch. 43 Pt. 3\(4\)](#); [S.I. 2003/1997](#), art. 2

<sup>F210</sup>**525 No charge in respect of post-acquisition benefits**

. . . . .

**Textual Amendments**

- F210** S. 525 repealed (16.4.2003 with effect in accordance with Sch. 22 para. 34(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 34\(1\)](#), [Sch. 43 Pt. 3\(4\)](#)

*Tax charge*

**526 Charge where option granted at a discount**

- (1) This section applies if, at the time when the share option is granted to the individual, the aggregate of—
  - (a) the amount or value of any consideration given by the individual for the grant of the option, and

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- (b) the amount payable by the individual, on exercising the option, in order to acquire the maximum number of shares that may be acquired under it, is less than the market value of the same quantity of issued shares of the same class.
- (2) The amount of the difference counts as employment income of the individual for the relevant tax year.
- (3) The “relevant tax year” is the tax year in which the option is granted to the individual.
- (4) [<sup>F211</sup>Section 480(4) (gain realised on acquisition of securities pursuant to option etc) provides for a deduction] to be made to take account of amounts that count as employment income under this section.

#### **Textual Amendments**

**F211** Words in s. 526(4) substituted (with effect in accordance with Sch. 22 para. 35(2) of the amending Act, otherwise 1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 35\(1\)](#); [S.I. 2003/1997, art. 2](#)

## **CHAPTER 9**

### ENTERPRISE MANAGEMENT INCENTIVES

#### *Introduction*

#### **527 Enterprise management incentives: qualifying options**

- (1) This Chapter provides—
  - (a) for share options notified to the Inland Revenue to be qualifying options for the purposes of the EMI code, and
  - (b) for exemptions and reliefs from income tax in connection with qualifying options.
- (2) Schedule 5 contains the requirements that have to be met for a share option to be a qualifying option, together with the notification procedure.
- (3) The provisions of—
  - (a) this and the following sections of this Chapter,
  - (b) Schedule 5, and
  - (c) Part 4 of Schedule 7D to TCGA 1992 (enterprise management incentives: capital gains tax consequences of exercise of qualifying option),
 together constitute “the EMI code”.
- (4) In the EMI code—
  - “qualifying option” means a share option—
    - (a) in relation to which the requirements of Schedule 5 are met at the time when the option is granted, and
    - (b) which is notified to the Inland Revenue in accordance with Part 7 of that Schedule;



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“replacement option” means an option within paragraph 41(4) of that Schedule (grant of replacement option in connection with company reorganisations);

“share option” means a right to acquire shares in a company;

and any reference to the requirements of Schedule 5 is to the requirements set out in paragraph 1(3) of that Schedule.

- (5) Other expressions used in the EMI code and contained in the index at the end of Schedule 5 have the meaning indicated by the index.

*Tax advantages: receipt of option*

## **F212 528 No charge on receipt of qualifying option**

.....

### **Textual Amendments**

**F212** S. 528 repealed (1.9.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 36\(1\)\(2\), Sch. 43 Pt. 3\(4\); S.I. 2003/1997, art. 2](#)

*Tax advantages: exercise of option*

## **529 Scope of tax advantages: option must be exercised within 10 years**

- (1) Sections 530 to 540 apply in connection with the exercise of a qualifying option.
- (2) But those sections only apply in cases where the option is exercised on or before the tenth anniversary of—
  - (a) the date of the grant of the option, or
  - (b) if it is a replacement option, the date of the grant of the original option.
- (3) In the EMI code “the original option” means—
  - (a) where there has been one replacement option, the option that that option replaced, or
  - (b) where there have been two or more replacement options, the option that the first of them replaced.

## **530 No charge on exercise of option to acquire shares at market value**

- (1) This section applies if the option is to acquire shares at not less than their market value—
  - (a) at the time when the option is granted, or
  - (b) if it is a replacement option, at the time when the original option was granted.
- (2) If this section applies, no liability to income tax arises by virtue of section 476 (charge on exercise etc. of option by employee) in respect of the exercise of the option.
- (3) This section has effect subject to section 532 (modified tax consequences following disqualifying events).

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### **531 Limitation of charge on exercise of option to acquire shares below market value**

- (1) This section applies if the option is to acquire shares at less than their market value—
- (a) at the time when the option is granted, or
  - (b) if it is a replacement option, at the time when the original option was granted, or at nil cost.
- (2) If this section applies, the section 476 gain is—

$$CMV - (ACO + ACS)$$

where—

CMV is the chargeable market value,

ACO is the amount or value of the consideration given for the grant of the option, and

ACS is the amount, if any, for which the shares are acquired.

- (3) “The chargeable market value” means—
- (a) the market value of the shares—
    - (i) at the time when the option was granted, or
    - (ii) if it is a replacement option, at the time when the original option was granted, or
  - (b) the market value of the shares at the time when the option is exercised, whichever is lower.
- (4) In this section “the section 476 gain” means the amount [F213 under section 478 (amount of charge under section 476) is to be regarded as the taxable amount for the purposes of section 476 in respect of the acquisition of the shares pursuant to the option.]
- (5) This section has effect subject to section 532 (modified tax consequences following disqualifying events).

#### **Textual Amendments**

**F213** Words in s. 531(4) substituted (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 37\(1\)\(2\)](#); [S.I. 2003/1997, art. 2](#)

### *Tax advantages where disqualifying events*

### **532 Modified tax consequences following disqualifying events**

- (1) This section applies where—
- (a) a disqualifying event (see section 533) occurs in relation to a qualifying option before the option is exercised, and
  - (b) the option is exercised later than 40 days after the day on which the event occurred.
- (2) If the option is within section 530(1) (option to acquire shares at market value), the section 476 gain is—

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## PEG - ACO

(see subsection (4)).

- (3) If the option is within section 531(1) (option to acquire shares at less than market value), the section 476 gain is—

$$(CMV + PEG) - (ACO + ACS)$$

(see subsection (4)).

- (4) For the purposes of subsections (2) and (3)—

ACO is the amount or value of the consideration given for the grant of the option,  
ACS is the amount, if any, for which the shares are acquired,

CMV is the chargeable market value (as defined by section 531(3)), and

PEG is the post-event gain, that is the amount (if any) by which the market value of the shares at the time when the option is exercised exceeds their market value immediately before the disqualifying event.

- (5) In those subsections “the section 476 gain” means the amount [<sup>F214</sup>under section 478 (amount of charge under section 476) is to be regarded as the taxable amount for the purposes of section 476 in respect of the acquisition of the shares pursuant to the option.]

- (6) Nothing in the following provisions—

- (a) subsections (2) and (3) above, or
- (b) sections 530 and 531,

applies if the amount that counts as employment income by virtue of section 476 in respect of the exercise of the option would, in the absence of those provisions, be less than the amount that counts as such income as a result of those provisions.

### Textual Amendments

**F214** Words in s. 532(5) substituted (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 38\(1\)\(2\)](#); [S.I. 2003/1997](#), [art. 2](#)

## 533 Disqualifying events

- (1) The following provisions deal with the events that are (or are to be treated as) disqualifying events in relation to a qualifying option—

- (a) section 534 (events relating to the relevant company),
- (b) section 535 (events relating to the employee), and
- (c) section 536 (other disqualifying events), read with sections 537 to 539 (which contain supplementary provisions).

- (2) In the provisions mentioned in subsection (1) “the employee” means the person holding the qualifying option and “the relevant company” means the company whose shares are the subject of the option (see paragraph 1(3) of Schedule 5).

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### **534 Disqualifying events relating to relevant company**

- (1) The following events relating to the relevant company are disqualifying events in relation to a qualifying option—
  - (a) when the relevant company becomes a 51% subsidiary of another company;
  - (b) when the relevant company comes under the control of—
    - (i) another company, or
    - (ii) another company and any other person connected with that other company,
 without becoming a 51% subsidiary of that other company;
  - (c) when the relevant company ceases to meet the trading activities requirement (see paragraphs 13 to 23 of Schedule 5).
- (2) But where a replacement option has been granted, an event within subsection (1)(a) or (b) is not a disqualifying event in relation to the old option (see paragraph 41(2) of Schedule 5) if the event occurs at any time during the period—
  - (a) beginning at the same time as the period within which the replacement option had to be granted (see paragraph 42 of Schedule 5), and
  - (b) ending with the release of the rights under the old option.
- (3) A disqualifying event is to be treated as occurring in relation to a qualifying option if the circumstances mentioned in subsection (4) arise.
- (4) The circumstances are that—
  - (a) the relevant company was a qualifying company at the time when the option was granted as a result only of preparations to carry on a qualifying trade; and
  - (b) either—
    - (i) the preparations cease to be carried on, or
    - (ii) the initial period comes to an end,
 without the relevant company (or, if it is a parent company, any member of the group) beginning to carry on that qualifying trade.
- (5) “The initial period” means the period of two years after the date when the option was granted.
- (6) Paragraph 41(5)(b) of Schedule 5 has the effect that a replacement option is to be treated as granted on the date when the original option was granted.

### **535 Disqualifying events relating to employee**

- (1) The following events relating to the employee are disqualifying events in relation to a qualifying option—
  - (a) when the employee ceases to be an eligible employee in relation to the relevant company as a result of ceasing to meet the requirement in paragraph 25 of Schedule 5 (the employment requirement);
  - (b) when the employee ceases to be such an employee as a result of ceasing to meet the requirement in paragraph 26 of that Schedule (the requirement as to commitment of working time).
- (2) In addition, a disqualifying event is to be treated as occurring in relation to a qualifying option at the end of any tax year if, during that year, the average amount per week of

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the employee's reckonable time in relevant employment was less than the statutory threshold.

- (3) An employee's "reckonable time in relevant employment" means the time which the employee in fact spent, as an employee in relevant employment—
  - (a) on the business of the relevant company, or
  - (b) if that company is a parent company, on the business of the group,together with any time which the employee would, as such an employee, have spent on that business but for any of the reasons set out in paragraph 26(3)(a) to (d) of Schedule 5 (requirement as to commitment of working time).
- (4) The "statutory threshold" means—
  - (a) 25 hours, or
  - (b) if less, 75% of the employee's working time.
- (5) For the purpose of applying subsection (2) to the tax year in which the option was granted, any part of that year which preceded the date on which it was granted is to be disregarded in calculating the average amount mentioned in that subsection.
- (6) In this section—
  - (a) "relevant employment" means employment—
    - (i) by the relevant company, or
    - (ii) if that company is a parent company, by any member of the group;
  - (b) "working time" has the meaning given by paragraph 27 of Schedule 5 (meaning of "working time").

### 536 Other disqualifying events

- (1) The following are also disqualifying events in relation to a qualifying option—
  - (a) any variation of the terms of the option whose effect is either—
    - (i) to increase the market value of the shares that are the subject of the option, or
    - (ii) that the requirements of Schedule 5 would no longer be met in relation to the option;
  - (b) any alteration to the share capital of the relevant company—
    - (i) to which subsection (2) (share values affected by alteration of rights or restrictions) of section 537 applies, and
    - (ii) whose effect is that the requirements of Schedule 5 would no longer be met in relation to the option;
  - (c) any alteration to the share capital of the relevant company to which—
    - (i) subsection (2) (share values affected by alteration of rights or restrictions), and
    - (ii) subsection (3) (alteration designed to increase share values),of section 537 apply;
  - (d) a conversion of any of the shares to which the option relates into shares of a different class, except in a case within section 538(2); and
  - (e) the grant to the employee of a relevant CSOP option, if immediately after it is granted the employee holds unexercised employee options in respect of shares with a total value of more than £100,000.
- (2) In subsection (1)(e)—

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“relevant CSOP option”, and  
“employee option”,

have the meaning given by section 539 (CSOP and other options relevant for purposes of this section); and sub-paragraphs (6) to (8) of paragraph 5 of Schedule 5 (determination of value of shares) apply for the purposes of subsection (1)(e) as they apply for the purposes of paragraph 5.

### **537 Alterations of share capital for purposes of section 536**

- (1) This section has effect for the purposes of section 536(1)(b) and (c) (other disqualifying events: alterations of share capital of relevant company).
- (2) This subsection applies to an alteration of the share capital of the relevant company if—
  - (a) the alteration affects (or but for the occurrence of some other event would affect) the value of the shares to which the option relates; and
  - (b) it consists of or includes—
    - (i) the creation, variation or removal of a right relating to any shares in the relevant company,
    - (ii) the imposition of a restriction relating to any such shares, or
    - (iii) the variation or removal of a restriction to which any such shares are subject.
- (3) This subsection applies to an alteration of the share capital of the relevant company if the effect of the alteration is to increase the market value of the shares to which the option relates and either—
  - (a) it is not made by the relevant company for commercial reasons, or
  - (b) the main purpose (or one of the main purposes) for making it is to increase the market value of those shares.
- (4) In this section any reference to—
  - (a) a restriction relating to shares or to which shares are subject, or
  - (b) a right relating to shares,
is a reference to such a restriction imposed or right conferred by any contract or arrangement or in any other way.

### **538 Share conversions excluded for purposes of section 536**

- (1) This section has effect for the purposes of section 536(1)(d) (other disqualifying events: share conversions).
- (2) A conversion of shares is not a disqualifying event if—
  - (a) it is a conversion of shares of one class only (“the original class”) into shares of one other class only (“the new class”);
  - (b) all the shares of the original class are converted into shares of the new class; and
  - (c) one of the conditions in subsection (3) is met.
- (3) The conditions are—
  - (a) that immediately before the conversion the majority of the relevant company’s shares of the original class are held otherwise than by or for the benefit of—

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- (i) directors or employees of the relevant company,
- (ii) an associated company of the relevant company, or
- (iii) directors or employees of such an associated company;
- (b) that immediately before the conversion the relevant company is employee-controlled as a result of holdings of shares of the original class.

[<sup>F215</sup>(4) “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” has the same meaning as in the benefits code (see section 67) but also includes a person who is to be or has been a director,

“employee” includes a person who is to be or has been an employee, and

“employee-controlled” has the same meaning as in Chapters 1 to 4 of this Part (see section 421H(1)).]

#### Textual Amendments

**F215** S. 538(4) substituted (1.9.2003) by Finance Act 2003 (c. 14), Sch. 22 para. 39(1)(2); S.I. 2003/1997, art. 2

### 539 CSOP and other options relevant for purposes of section 536

- (1) This section has effect for the purposes of section 536(1)(e) (other disqualifying events: grant of CSOP option).
- (2) A “relevant CSOP option” means a CSOP option granted to the employee by reason of the employee’s employment—
  - (a) with the employer company, or
  - (b) if it is a member of a group of companies, with any member of that group.
- (3) A share option is an “employee option” if it is—
  - (a) the qualifying option mentioned in section 536(1), or
  - (b) another qualifying option granted to the employee by reason of the employee’s employment as mentioned in subsection (2)(a) or (b) above, or
  - (c) a relevant CSOP option.
- (4) In this section a “CSOP option” means an option to acquire shares under a scheme approved under Schedule 4 (CSOP schemes).

*Tax advantages: taxable benefits*

### 540 No charge on acquisition of shares as taxable benefit

- (1) In its application in relation to a UK resident employee, [<sup>F216</sup>Chapter 3C of this Part] (taxable benefits: notional loans in respect of acquisitions of shares) does not apply in relation to the acquisition of shares by the exercise of a qualifying option.
- (2) An employee is a “UK resident employee” if—
  - (a) at the time when the option is granted, or
  - (b) at the time when it is exercised,

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the earnings from the employment are (or would be if there were any) general earnings to which section 15 or 21 applies (earnings for year when employee resident and ordinarily resident in the United Kingdom).

#### Textual Amendments

**F216** Words in s. 540(1) substituted (with effect in accordance with Sch. 22 para. 40(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), **Sch. 22 para. 40(1)**

#### *Other income tax consequences*

### 541 Effects on other income tax charges

- [<sup>F217</sup>(1) Nothing in the EMI code affects—
- (a) the operation of Chapters 2 to 4 of this Part in relation to shares acquired under a qualifying option, or
  - (b) the operation of Chapter 5 of this Part otherwise than in relation to the acquisition of shares under a qualifying option.
- (2) But in calculating the taxable amount for the purposes of section 426 (post-acquisition charge on restricted securities) in respect of shares acquired under a qualifying option, the amount of relief on the exercise of the option is to be regarded as a deductible amount for the purposes of section 428 (amount of charge).]
- (3) “The amount of relief on the exercise of the option” means the difference between—
- (a) the amount that would have counted as employment income by virtue of section 476 in respect of the exercise of the option apart from the EMI code, and
  - (b) the amount (if any) that in fact counts as such income in accordance with the EMI code.

#### Textual Amendments

**F217** S. 541(1)(2) substituted (1.9.2003 with effect in accordance with Sch. 22 para. 41(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), **Sch. 22 para. 41(1)**; [S.I. 2003/1997, art. 2](#)

## CHAPTER 10

### PRIORITY SHARE ALLOCATIONS

#### *Exemption where offer made to both public and employees*

### 542 Exemption: offer made to public and employees

- (1) This section applies if—
- (a) there is a genuine offer to the public of shares in a company at a fixed price or by tender,



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- (b) a director or employee of the company, or of another company or person, is entitled by reason of the office or employment to an allocation of the shares in priority to members of the public, and
  - (c) conditions A to C are met.
- (2) No liability to income tax in respect of earnings arises by virtue of any benefit derived by the director or employee from the entitlement.
- (3) Condition A is that the aggregate number of shares subject to the offer that may be allocated as mentioned in subsection (1)(b) (“priority shares”) does not exceed—
- (a) if the offer is part of arrangements which include one or more other offers to the public of shares of the same class, either of the limits in subsection (4), or
  - (b) in any other case, 10% of the shares subject to the offer (including the priority shares).
- (4) The limits referred to in subsection (3)(a) are—
- (a) 40% of the shares subject to the offer (including the priority shares), and
  - (b) 10% of all the shares of the class in question that are subject to any of the offers forming part of the arrangements (including the priority shares).
- (5) Condition B is that all the persons entitled to an allocation of priority shares are entitled to it on similar terms (see section 546).
- (6) Condition C is that those persons are not restricted wholly or mainly to directors or to those whose remuneration exceeds a particular level.
- (7) This section has effect subject to section 543 (discount not covered by exemption in this section).

#### **543 Discount not covered by exemption in section 542**

- (1) This section applies if the total of—
- (a) the price payable by the director or employee for the shares of the company allocated to the director or employee under the offer, and
  - (b) the amount or value of any registrant discount made to the director or employee in respect of the shares,
- is less than the fixed price or the lowest price successfully tendered.
- (2) Section 542(2) (exemption: offer made to public and employees) does not apply to the benefit (if any) represented by the difference.

*Exemption where different offers made to public and employees*

#### **544 Exemption: different offers made to public and employees**

- (1) This section applies if—
- (a) there is a genuine offer to the public of a combination of shares in two or more companies at a fixed price or by tender (“the public offer”),
  - (b) there is at the same time an offer (“the employee offer”) of shares, or of a combination of shares, in one or more, but not all, of those companies—
    - (i) to directors or employees of any of those companies, or of any other company or person, or

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- (ii) to those directors or employees and to other persons,
  - (c) any of those directors or employees is entitled by reason of the office or employment to an allocation of shares under the employee offer in priority to any allocation to members of the public under the public offer, and
  - (d) conditions A to C are met.
- (2) No liability to income tax in respect of earnings arises by virtue of any benefit derived by the director or employee from the entitlement.
- (3) Condition A is that for each company whose shares are subject to the employee offer, the aggregate number of shares subject to that offer that may be allocated as mentioned in subsection (1)(c) (“priority shares”) does not exceed—
- (a) if the public offer and the employee offer are part of arrangements which include one or more other offers to the public of shares in the company of the same class, either of the limits in subsection (4), or
  - (b) in any other case, 10% of the shares in the company that are subject to the public offer or the employee offer (including the priority shares).
- (4) The limits referred to in subsection (3)(a) are—
- (a) 40% of the shares in the company that are subject to the public offer or the employee offer (including the priority shares), and
  - (b) 10% of all the shares in the company of the class in question that are subject to any of the offers forming part of the arrangements (including the priority shares).
- (5) Condition B is that all the persons entitled to an allocation of priority shares are entitled to it on similar terms (see section 546).
- (6) Condition C is that those persons are not restricted wholly or mainly to directors or to those whose remuneration exceeds a particular level.
- (7) This section has effect subject to section 545 (discount not covered by exemption in this section).

#### **545 Discount not covered by exemption in section 544**

- (1) This section applies if the total of—
- (a) the price payable by the director or employee for the shares of a company allocated to the director or employee under the employee offer, and
  - (b) the amount or value of any registrant discount made to the director or employee in respect of the shares,
- is not the same as, or as near as reasonably practicable to, the appropriate notional price for the shares of the company.
- (2) Section 544(2) (exemption: different offers made to public and employees) does not apply to the benefit (if any) represented by the amount by which the appropriate notional price exceeds the total referred to in subsection (1).
- (3) The “appropriate notional price” for the shares of a company is—
- (a) if subsection (4) applies, the amount given by the formula in subsection (6), and
  - (b) in any other case, the notional price.

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- (4) This subsection applies if shares of the company are subject to the public offer and there is a difference between CP and AFP—
- (a) CP being the price for the combination of shares subject to the public offer determined by aggregating the notional prices for each one of the shares comprised in the combination, and
  - (b) AFP being the actual fixed price or (as the case may be) the lowest successfully tendered price for that combination of shares.
- (5) The “notional price” for the shares of a company is the price that might reasonably have been expected to be the fixed price for the shares of the company under a separate offer of those shares if—
- (a) the shares of the company, and of each of the other companies had, instead of being subject to the public offer and the employee offer, been subject to separate offers to the public in respect of each company at fixed prices, and
  - (b) those separate offers had been made at the time at which the public offer was in fact made.
- (6) The formula referred to in subsection (3)(a) is—

$$NP \times \frac{AFP}{CP}$$

where—

NP is the notional price for the shares of the company, and

AFP and CP have the same meanings as in subsection (4).

#### *Supplementary provisions*

### **546 Meaning of being entitled “on similar terms”**

- (1) This section applies for the purposes of sections 542(5) and 544(5) (condition that entitlements to allocation of priority shares must be on similar terms).
- (2) The fact that different provision is made for persons according to—
- (a) the levels of their remuneration,
  - (b) the length of their service, or
  - (c) similar factors,
- does not mean that they are not entitled to an allocation on similar terms.
- (3) The fact that the allocations of shares in a company to which non-company employees are entitled are smaller than those to which company employees are entitled does not mean that they are not entitled on similar terms, if conditions A and B are met.
- (4) Condition A is that each non-company employee is also entitled by reason of the office or employment and in priority to members of the public, to an allocation of shares in another company or companies which are offered to the public at a fixed price or by tender at the same time as the shares in the company.
- (5) Condition B is that in the case of each non-company employee the aggregate value of all the shares included in the allocations to which the non-company employee is

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entitled is the same, or as nearly the same as is reasonably practicable, as that of the shares in the company included in the entitlement of a comparable company employee.

(6) For the purposes of subsection (5), the value of shares is to be measured by reference to the fixed price or the lowest price successfully tendered.

(7) In this section—

“company employee”, in relation to a company, means a director or employee of the company, and

“non-company employee”, in relation to a company, means a director or employee of another company or person.

#### **547 Meaning and amount or value of “registrant discount”**

(1) For the purposes of this Chapter there is a “registrant discount” in respect of the shares of a company if conditions A to C are met.

(2) Condition A is that members of the public who comply with such requirements as may be imposed in connection with the offer or, if section 544 applies, the public offer are, or may become, entitled to a discount in respect of the whole or part of the shares of the company allocated to them.

(3) Condition B is that at least 40% of the shares of the company allocated to members of the public are allocated to individuals who are or become entitled to—

(a) the discount, or

(b) some other benefit of similar value for which they may elect as an alternative to the discount.

(4) Directors and employees who are entitled by reason of their office or employment to an allocation of the shares in priority to members of the public are not to be treated as members of the public for the purposes of subsection (3).

(5) Condition C is that subscribing employees are, or may become, entitled to the same discount in respect of the shares of the company as any other members of the public to whom shares of the company are allocated under the offer.

(6) In subsection (5) a “subscribing employee” means a director or employee who—

(a) subscribes for shares—

(i) if section 542 (offer made to public and employees) applies, under the offer as a member of the public, or

(ii) if section 544 (different offers made to public and employees) applies, under the public offer as a member of the public or under the employee offer as a director or employee, and

(b) complies (or, in the case of a requirement to register, is taken under the terms of the offer to comply) with the requirements mentioned in subsection (2).

(7) For the purposes of this Chapter, the “amount or value” of any registrant discount made to a director or employee means—

(a) the amount of any such discount made to the director or employee as is mentioned in subsection (5), or

(b) the value of any such other benefit as is mentioned in subsection (3)(b) which is conferred on the director or employee as an alternative to the discount.

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## 548 Minor definitions

(1) In this Chapter—

“director” means—

- (a) in relation to a company whose affairs are managed by a board of directors or similar body, a member of that body,
- (b) in relation to a company whose affairs are managed by a single director or similar person, that director or person, and
- (c) in relation to a company whose affairs are managed by the members themselves, a member of the company, and

includes any person in accordance with whose directions or instructions the directors of the company (as defined in paragraphs (a) to (c)) are accustomed to act and a person who is to be, or has ceased to be, a director (as so defined);

“employee” includes a person who is to be or has been an employee;

“shares” includes stock;

“the employee offer” and “the public offer” have the meanings given by section 544(1).

(2) For the purposes of subsection (1) a person is not to be regarded as a person in accordance with whose directions or instructions the directors of the company are accustomed to act merely because the directors act on advice given by that person in a professional capacity.

(3) References in this Chapter—

- (a) to the employment, in relation to an employee, are to the employment of that employee, and
- (b) to the office, in relation to a director, are to the office of that director.

## CHAPTER 11

### SUPPLEMENTARY PROVISIONS ABOUT EMPLOYEE BENEFIT TRUSTS

#### *Introduction*

## 549 Application of this Chapter

(1) This Chapter applies for the purposes of any listed provision in circumstances where—

- (a) an individual (“B”) is interested as a beneficiary of an employee benefit trust in shares or obligations of a particular company (“the company”), and
- (b) the question arises under that provision whether the trustees of the trust are, as a result of B’s being so interested, to be regarded as associates of B’s for the relevant purposes.

The relevant purposes are those of the operation, in relation to the company, of the “no material interest” requirement contained in the Schedule to this Act in which the listed provision appears.

(2) In this Chapter “listed provision” means any of the following provisions (under which trustees of an employee benefit trust are not to be regarded as associates if specified limits relating to share ownership are not exceeded)—

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- (a) paragraph 23(2) of Schedule 2 (approved SIPs),
  - (b) paragraph 15(2) of Schedule 3 (approved SAYE option schemes),
  - (c) paragraph 13(2) of Schedule 4 (approved CSOP schemes), or
  - (d) paragraph 32(2) of Schedule 5 (enterprise management incentives).
- (3) The general effect of this Chapter is that if the provisions of—
- (a) sections 552 and 553 (attribution of interest in company to beneficiary or associate), or
  - (b) section 554 (attribution of further interest),
- apply in relation to B or an associate of B's, B or the associate is to be treated for the purposes of the listed provision as having been the beneficial owner of a particular percentage of the company's ordinary share capital on a particular date.
- (4) In this Chapter, in relation to an individual, "associate"—
- (a) has the same meaning as in section 417(3) and (4) of ICTA (expressions relating to close companies), but
  - (b) does not include the trustees of an employee benefit trust as a result only of the individual's having (as mentioned in subsection (1)(a)) an interest in shares or obligations of the company which are subject to the trust.
- (5) In this Chapter "employee" means the holder of a taxable employment under Part 2 (as defined in section 66(3)), and accordingly includes an office-holder whose office is within the scope of that definition as a result of section 5(1).

#### *Employee benefit trusts*

### **550 Meaning of "employee benefit trust"**

- (1) In this Chapter "employee benefit trust", in relation to a company, means a trust where conditions A and B are met.
- (2) Condition A is that all or most of the employees of the company are eligible to benefit under the trust.
- (3) Condition B is that after 13th March 1989 either—
- (a) there has been no disposal of any of the property subject to the trust, or
  - (b) any disposal of any of that property was a disposal within subsection (4).
- (4) The disposals within this subsection are—
- (a) disposals in the ordinary management of the trust, or
  - (b) qualifying disposals (within the meaning given by section 551).
- (5) In this section and section 551 "disposal" means disposal by sale, loan or otherwise.

### **551 "Qualifying disposals" for purposes of section 550**

- (1) For the purposes of section 550 (meaning of "employee benefit trust") a "qualifying disposal" is a disposal of property consisting of—
- (a) any of the ordinary share capital of the company, or
  - (b) money paid outright,
- where any of conditions 1, 2 and 3 is met.

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- (2) Condition 1 is that the property has been applied for the benefit of—
  - (a) individual employees or former employees of the company,
  - (b) spouses, former spouses, widows or widowers of employees or former employees of the company,
  - (c) dependants of persons within paragraph (a), or
  - (d) relatives, or spouses of relatives, of persons within paragraph (a) or (b).
- (3) In subsection (2) each reference to the company includes a reference to a company controlled by the company.
- (4) Condition 2 is that the property has been applied for charitable purposes.
- (5) Condition 3 is that the property has been transferred to—
  - (a) the trustees of another employee benefit trust,
  - (b) the trustees of a qualifying employee share ownership trust (within the meaning of Schedule 5 to FA 1989), or
  - (c) the trustees of a profit sharing scheme approved under Schedule 9 to ICTA (approved share option schemes and profit sharing schemes).
- (6) In this section “relative” means—
  - (a) parent, child or remoter relation in the direct line, or
  - (b) brother, sister, uncle, aunt, nephew or niece.

#### *Attribution of interests in company*

### **552 Attribution of interest in company to beneficiary or associate**

- (1) This section applies if—
  - (a) after 13th March 1989 B, or an associate of B's, has received a payment (“the relevant payment”) from the trustees of the employee benefit trust, and
  - (b) at any time during the period of 3 years ending with the day on which the relevant payment was received (“the payment date”), the property subject to the trust consisted of or included any part of the ordinary share capital of the company.
- (2) In such a case B or the associate is to be treated for the purposes of the listed provision as having been the beneficial owner of the appropriate percentage of the ordinary share capital of the company on the payment date.
- (3) This is in addition to any percentage of that share capital of which B or the associate was actually the beneficial owner on that date.
- (4) Section 553 explains what is meant by “the appropriate percentage”.

### **553 Meaning of “appropriate percentage” for purposes of section 552**

- (1) For the purposes of section 552 “the appropriate percentage” is—

$$\frac{P \times 100}{D}$$

where P and D have the meaning given by the following provisions.

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(2) Unless subsection (3) applies, P is the aggregate of the relevant payment and any other payments received by B or associates of B's from the trustees of the trust during the period of 12 months ending with the payment date.

(3) If—

- (a) any distributions were made to the trustees of the trust by the company in respect of its ordinary share capital during the period of 3 years ending with the payment date, and
- (b) the aggregate of those distributions is less than the aggregate mentioned in subsection (2),

P is the aggregate of those distributions.

(4) Unless subsection (5) applies, D is the amount determined as follows—

*Step 1*

Calculate the aggregate of—

- (a) any distributions made by the company in respect of its ordinary share capital during the period of 12 months ending with the payment date,
- (b) any distributions so made during the period of 12 months immediately preceding that mentioned in paragraph (a), and
- (c) any distributions so made during the period of 12 months immediately preceding that mentioned in paragraph (b).

*Step 2*

Divide the aggregate so calculated by the number of the periods mentioned in paragraphs (a) to (c) in which distributions were so made.

(5) If no distributions were so made during any of those periods, D is 1.

(6) In this section “the payment date” and “the relevant payment” have the meaning indicated in section 552(1).

## **554 Attribution of further interest in company**

(1) This section applies if—

- (a) B or an associate of B's is (apart from this section) to be treated by virtue of section 552(2) as having been the beneficial owner of a percentage of the ordinary share capital of the company as a result of receiving the relevant payment from the trustees of an [<sup>F218</sup>employee] benefit trust, and
- (b) B or an associate of B's has, during the period of 12 months ending with the payment date, received one or more payments from the trustees of any other employee benefit trust or trusts connected with the company.

(2) In such a case section 552 applies to B or (as the case may be) the associate mentioned in subsection (1)(a) as if B or the associate had received—

- (a) any payment from the trustees of a trust as mentioned in subsection (1)(b), or
- (b) where more than one payment has been received from the trustees of a trust, the last of the payments,

on the payment date.



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- (3) B or the associate is accordingly to be treated for the purposes of the listed provision as having been the beneficial owner on the payment date of both—
  - (a) the percentage of the ordinary share capital of the company mentioned in subsection (1)(a), and
  - (b) the appropriate percentage of that share capital as determined in accordance with subsection (2).
- (4) This is in addition to any percentage of that share capital of which B or the associate was actually the beneficial owner on that date.
- (5) For the purposes of this section a trust is “connected with” the company if, at any time during the period of 3 years ending with the payment date, the property subject to the trust consisted of or included any part of the ordinary share capital of the company.
- (6) In this section “the payment date” and “the relevant payment” have the meaning indicated in section 552(1).

#### **Textual Amendments**

**F218** Word in s. 554(1)(a) substituted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 17 para. 9\(3\)](#)

## **PART 8**

### FORMER EMPLOYEES: DEDUCTIONS FOR LIABILITIES

#### *Deductions from total income*

#### **555 Former employee entitled to deduction from total income**

- (1) This Part applies if—
  - (a) a former employee makes a deductible payment, or
  - (b) a former employer makes a deductible payment on behalf of a former employee and the payment is treated—
    - (i) as a relevant retirement benefit, or
    - (ii) as post-employment earnings,of the former employee.
- (2) A deduction of the amount of the deductible payment may be made when computing the former employee’s total income for the tax year in which the payment is made.
- (3) Subsection (2) applies only if the former employee makes a claim to the deduction.
- (4) The entitlement to a deduction under this section is subject to sections 556 and 557.
- (5) For the application of this Part in relation to former office-holders, see section 564.
- (6) For relief from capital gains tax where the amount of the deduction allowed under this section exceeds total income, see section 263ZA of TCGA 1992.

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## **556 Deductible payments made outside the time limits allowed**

- (1) No deduction may be made under section 555 if the deductible payment is made—
  - (a) on or before the day on which the former employee ceased to hold the former employment, or
  - (b) after the end of the sixth tax year following the tax year in which the former employee ceased to hold the former employment.
- (2) If subsection (1)(a) applies, see section 346 (deduction for employee liabilities).

## **557 Deductible payments wholly or partly borne by the former employer etc.**

- (1) This section applies if—
  - (a) a deductible payment is made by the former employee (and not by the former employer on behalf of the former employee), but
  - (b) the whole or a part of the cost of making the payment is borne—
    - (i) by the former employer, or
    - (ii) out of the proceeds of a contract of insurance.
- (2) No deduction of the amount of the cost borne as mentioned in subsection (1)(b) (the “relevant amount”) may be made under section 555.
- (3) But this is subject to subsection (4) if the whole or a part of the relevant amount is treated—
  - (a) as a relevant retirement benefit of the former employee, or
  - (b) as post-employment earnings of the former employee.
- (4) In such a case, a deduction of so much of the relevant amount as is treated in that way may be made under section 555.

### *Interpretation*

## **558 Meaning of “deductible payment”**

- (1) For the purposes of this Part each of the following is a deductible payment—
  - A. Payment in or towards the discharge of a liability related to the former employment.
  - B. Payment of any costs or expenses incurred in connection with—
    - (a) a claim that the former employee is subject to a liability related to the former employment, or
    - (b) proceedings relating to or arising out of a claim that the former employee is subject to a liability related to the former employment.
  - C. Payment of a premium under a qualifying insurance contract, but only to the extent that the premium relates to—
    - (a) provision in the contract for the former employee to be indemnified against a payment falling within paragraph A, or
    - (b) provision in the contract for the payment of any costs or expenses falling within paragraph B.

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- (2) But a payment which falls within paragraph A or B is not a deductible payment if it would have been unlawful for the former employer to enter into a contract of insurance in respect of the liability, or costs or expenses, in question.
- (3) In this Part—
  - (a) “premium”, in relation to a qualifying insurance contract, means an amount payable to the insurer under the contract, and
  - (b) where a qualifying insurance contract relates to more than one person, employment or risk, the part of the premium to be treated as relating to each of them is to be determined by apportionment on a just and reasonable basis.

### **559 Liabilities related to the former employment**

For the purposes of this Part each of the following kinds of liability is related to the former employment—

A. Liability imposed upon the former employee because he did an act, or failed to do an act—

- (a) in his capacity as holder of the former employment, or
- (b) in any other capacity in which he acted in the performance of the duties of the former employment.

B. Liability imposed upon the former employee in connection with any proceedings relating to, or arising from, a claim that he is subject to a liability because he did an act, or failed to do an act—

- (a) in his capacity as holder of the former employment, or
- (b) in any other capacity in which he acted in the performance of the duties of the former employment.

### **560 Meaning of “qualifying insurance contract”**

- (1) In section 558 “qualifying insurance contract” means a contract of insurance which meets conditions A, B, C and D.
- (2) Condition A is that, so far as the risks insured against are concerned, the contract only relates to one or more of the following—
  - (a) the indemnification of a former employee against a liability related to the former employment,
  - (b) the indemnification of a person against vicarious liability in respect of a liability related to another person’s employment,
  - (c) the payment of costs or expenses incurred—
    - (i) in connection with a claim that a person is subject to a liability to which the insurance relates, or
    - (ii) in connection with any proceedings relating to or arising out of a claim that a person is subject to a liability to which the insurance relates,
  - (d) the indemnification of an employer against loss from a payment made by the employer to a former employee in respect of—
    - (i) a liability related to the former employment, or
    - (ii) any costs or expenses incurred as mentioned in paragraph (c).
- (3) Condition B is that—

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- (a) the period of insurance under the contract does not exceed 2 years or, if it does, it does so only because of one or more renewals, each for a period of 2 years or less, and
  - (b) the insured is not required to renew the contract for any period.
- (4) Condition C is—
- (a) that the insured is not entitled under the contract to receive any payment or other benefit in addition to—
    - (i) cover for the risks insured against, and
    - (ii) any right to renew the contract, or
  - (b) if the insured is so entitled, that the part of the premium reasonably attributable to the entitlement is not a significant part of the whole premium.
- (5) Condition D is that the contract is not connected with another contract.

## **561 Connected contracts**

- (1) An insurance contract is connected with another contract for the purposes of section 560 if conditions E and F are met—
- (a) at the time when both contracts are first in force, or
  - (b) at any time after that time.
- (2) Condition E is that one of the contracts was entered into—
- (a) by reference to the other, or
  - (b) with a view to enabling or facilitating entry into the other on particular terms.
- (3) Condition F is that the terms on which one of the contracts was entered into are significantly different from what they would have been if—
- (a) it had not been entered into in anticipation of the other being entered into, or
  - (b) the other had not also been entered into.
- (4) If—
- (a) there is only one such significant difference in terms, and
  - (b) the contracts meet conditions A, B and C specified in section 560,
- the difference may be disregarded in the following cases.
- (5) The first case is where the difference is a reduction in premiums under the contract that is reasonably attributable only to the contract—
- (a) containing a right to renew, or
  - (b) being entered into by way of renewal.
- (6) The second case is where—
- (a) two or more contracts have been entered into as part of a single transaction, and
  - (b) the difference is reductions in their premiums that are reasonably attributable only to the premium under each of them having been fixed by reference to the appropriate proportion of the combined premium.
- (7) In subsection (6) “the combined premium” means the amount that would have been the total premium under a single contract relating to all the risks covered by the contracts.

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## **562 Meaning of “former employee” and “employment”**

- (1) In this Part “former employee” means an individual who has ceased to hold an employment.
- (2) In this Part “employment” includes in particular—
  - (a) any employment under a contract of service,
  - (b) any employment under a contract of apprenticeship, and
  - (c) any employment in the service of the Crown.

“Employee” and “employer” have corresponding meanings.

## **563 Other interpretation**

In this Part each of the following expressions, when used in relation to a former employee, has the meaning given—

“former employment” means the employment which the former employee has ceased to hold;

“former employer” means—

- (a) the person under whom the former employee held the former employment,
- (b) a person for the time being carrying on the whole or any part of the business or other undertaking for the purposes of which the former employee held the former employment,
- (c) a person who is for the time being subject to any of the liabilities with respect to that business or other undertaking of the person mentioned in paragraph (a), and
- (d) a person who is connected with a person falling within paragraph (a), (b) or (c);

“post-employment earnings” means so much of any amount received after the former employee has ceased to hold the former employment as constitutes general earnings for the purposes of the employment income Parts;

“relevant retirement benefit” means a benefit—

- (a) which is received by the former employee under a retirement benefits scheme of which he is a member in respect of the former employment, and
- (b) which, under Chapter 2 of Part 6 (benefits from non-approved pension schemes), counts as employment income of the former employee.

## **564 Application of this Part to office-holders**

- (1) The provisions of this Part are expressed to apply to former employees but they apply equally to former office-holders.
- (2) In those provisions as they apply to a former office-holder—
  - (a) references to holding a former employment are to holding the office;
  - (b) “former employment” means the office held;
  - (c) “former employer” means the person under whom the person held the office.
- (3) In this Part “office” includes in particular any position which has an existence independent of the person who holds it and may be filled by successive holders.

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## PART 9

### PENSION INCOME

#### CHAPTER 1

##### INTRODUCTION

#### 565 Structure of Part 9

The structure of this Part is as follows— Chapter 2—

- (a) imposes the charge to tax on pension income, and
- (b) provides for deductions to be made from the amount of income chargeable;

Chapters 3 to 15 set out the types of income which are charged to tax under this Part and, for each type of income, identify—

- (a) the amount of income chargeable to tax for a tax year, and
- (b) the person liable to pay any tax charged;

Chapters 16 to 18 deal with exemptions from the charge to tax (whether under this Part or any other provision).

#### CHAPTER 2

##### TAX ON PENSION INCOME

#### 566 Nature of charge to tax on pension income and relevant definitions

- (1) The charge to tax on pension income under this Part is a charge to tax on that income excluding any exempt income.
- (2) “Pension income” means the pensions, annuities and income of other types to which the provisions listed in subsection (4) apply.

This definition applies for the purposes of the Tax Acts.

- (3) “Exempt income” means pension income on which no liability to income tax arises as a result of any provision of Chapters 16 to 18 of this Part.

This definition applies for the purposes of this Part.

- (4) These are the provisions referred to in subsection (2)—

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| <i>Provision</i> | <i>Income</i>                           | <i>Chapter (of this Part)</i> |
|------------------|---|-------------------------------|
| Section 569      | United Kingdom pensions                 | Chapter 3                     |
| Section 573      | Foreign pensions                        | Chapter 4                     |
| Section 577      | United Kingdom social security pensions | Chapter 5                     |

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|             |   |            |
|-------------|---|------------|
| Section 580 | Pensions or annuities from approved retirement benefits schemes   | Chapter 6  |
| Section 583 | Unauthorised payments from—<br>(a) approved retirement benefits schemes, or<br>(b) former approved superannuation funds (see section 593) | Chapter 6  |
| Section 590 | Annuities paid under former approved superannuation funds   | Chapter 7  |
| Section 595 | Annuities from approved personal pension schemes  | Chapter 8  |
| Section 598 | Income withdrawals under approved personal pension arrangements   | Chapter 8  |
| Section 601 | Unauthorised personal pension payments  | Chapter 8  |
| Section 605 | Annuities under retirement annuity contracts  | Chapter 9  |
| Section 609 | Annuities for the benefit of dependants   | Chapter 10 |
| Section 610 | Annuities under sponsored superannuation schemes  | Chapter 10 |
| Section 611 | Annuities in recognition of another's services  | Chapter 10 |
| Section 615 | Certain overseas government pensions paid in the United Kingdom   | Chapter 11 |
| Section 619 | The House of Commons Members' Fund  | Chapter 12 |
| Section 623 | Return of surplus employee additional voluntary contributions   | Chapter 13 |
| Section 629 | Pre-1973 pensions paid under OPA 1973   | Chapter 14 |
| Section 633 | Voluntary annual payments   | Chapter 15 |

## 567 Amount charged to tax

- (1) The amount of pension income which is charged to tax under this Part for a particular tax year is as follows.

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- (2) In relation to each pension, annuity or other item of pension income, the amount charged to tax is the “net taxable pension income” for the tax year.
- (3) The net taxable pension income for a pension, annuity or other item of pension income for a tax year is given by the formula—

## TPI- DPI

where—

TPI means the amount of taxable pension income for that pension, annuity or item of pension income for that year (see subsection (4)), and

DPI means the total amount of any deductions allowed from the pension, annuity or item of pension income (see subsection (5)).

- (4) For the purposes of this Act—
  - (a) the amount of taxable pension income for a pension, annuity or other item of pension income for a tax year is determined in accordance with Chapters 3 to 15 of this Part (which contain provisions relating to this amount for each type of pension income); and
  - (b) in determining the amount of taxable pension income for a pension, annuity or other item of pension income, any exempt income is to be excluded.
- (5) The deductions allowed from a pension, annuity or other item of pension income are those under—
  - section 617 (10% deduction from an overseas government pension to which section 615 applies);
  - Part 12 (payroll giving).

### 568 Person liable for tax

For the provision identifying which person is liable for any tax charged under this Part on a pension, annuity or other item of pension income, see Chapters 3 to 15.

## CHAPTER 3

### UNITED KINGDOM PENSIONS: GENERAL RULES

### 569 United Kingdom pensions

- (1) This section applies to any pension paid by or on behalf of a person who is in the United Kingdom.
- (2) But this section does not apply to a pension if any provision of Chapters 5 to 14 of this Part applies to it.
- (3) For pensions paid by or on behalf of a person who is outside the United Kingdom, see Chapter 4 of this Part.



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**570 “Pension”: interpretation**

In this Chapter “pension” includes a pension which is paid voluntarily or is capable of being discontinued.

**571 Taxable pension income**

If section 569 applies, the taxable pension income for a tax year is the full amount of the pension accruing in that year irrespective of when any amount is actually paid.

**572 Person liable for tax**

If section 569 applies, the person liable for any tax charged under this Part is the person receiving or entitled to the pension.

## CHAPTER 4

### FOREIGN PENSIONS: GENERAL RULES

**573 Foreign pensions**

- (1) This section applies to any pension paid by or on behalf of a person who is outside the United Kingdom to a person who is resident in the United Kingdom.
- (2) But this section does not apply to a pension if any provision of Chapters 5 to 14 of this Part applies to it.
- (3) For pensions paid by or on behalf of a person who is in the United Kingdom, see Chapter 3 of this Part.

**574 “Pension”: interpretation**

- (1) For the purposes of this Chapter “pension” includes a pension which is paid voluntarily, or is capable of being discontinued, if conditions A and B are met.
- (2) Condition A is that the pension is paid to—
  - (a) a former employee or a former office-holder,
  - (b) the widow or widower of a former employee or a former office-holder, or
  - (c) any child, relative or dependant of a former employee or a former office-holder.
- (3) Condition B is that the pension is paid by or on behalf of—
  - (a) the person—
    - (i) who employed the former employee, or
    - (ii) under whom the former office-holder held the office, or
  - (b) the successors of that person.
- (4) In this section “office” includes in particular any position which has an existence independent of the person who holds it and may be filled by successive holders.

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## 575 Taxable pension income

- (1) If section 573 applies, the taxable pension income for a tax year is <sup>F219</sup>the full amount of the pension income arising in the tax year, but subject to subsections (2) and (3).]
- <sup>F220</sup>(2) The full amount of the pension income arising in the tax year is to be calculated on the basis that the pension is 90% of its actual amount, unless as a result of subsection (3) the pension income is charged in accordance with section 832 of ITTOIA 2005 (relevant foreign income charged on the remittance basis).
- (3) That pension income is treated as relevant foreign income for the purposes of Chapters 2 and 3 of Part 8 of that Act (relevant foreign income: remittance basis and deductions and reliefs).
- (4) But if that pension income arises in the Republic of Ireland, section 839 of that Act (annual payments payable out of relevant foreign income) applies with the omission of condition B and subsection (5)(a).
- (5) See also Chapter 4 of that Part (unremittable income).]

### Textual Amendments

**F219** Words in s. 575(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 606\(2\)](#) (with [Sch. 2](#))

**F220** S. 575(2)-(5) substituted for s. 575(2) (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 606\(3\)](#) (with [Sch. 2](#))

## 576 Person liable for tax

If section 573 applies, the person liable for any tax charged under this Part is the person receiving or entitled to the pension.

## CHAPTER 5

### UNITED KINGDOM SOCIAL SECURITY PENSIONS

## 577 United Kingdom social security pensions

- (1) This section applies to—
  - the state pension,
  - graduated retirement benefit,
  - industrial death benefit,
  - widowed mother’s allowance,
  - widowed parent’s allowance, and
  - widow’s pension.
- (2) In this section—
  - “state pension” means any pension payable under—
    - (a) section 44, 48A, 48B, 48BB, 51 or 78 of SSCBA 1992, or
    - (b) section 44, <sup>F221</sup>48A], 48B, 48BB, 51 or 78 of SSCB(NI)A 1992;
  - “graduated retirement benefit” means any benefit payable under—

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- (a) section 36 or 37 of the National Insurance Act 1965 (c. 51), or
- (b) section 35 or 36 of the National Insurance Act (Northern Ireland) 1966 (c. 6 (N.I.));  
“industrial death benefit” means any benefit payable under—
  - (a) section 94 of, and Part 6 of Schedule 7 to, SSCBA 1992, or
  - (b) section 94 of, and Part 6 of Schedule 7 to, SSCB(NI)A 1992;“widowed mother’s allowance” means any allowance payable under—
  - (a) section 37 of SSCBA 1992, or
  - (b) section 37 of SSCB(NI)A 1992;“widowed parent’s allowance” means any allowance payable under—
  - (a) section 39A of SSCBA 1992, or
  - (b) section 39A of SSCB(NI)A 1992;“widow’s pension” means any pension payable under—
  - (a) section 38 of SSCBA 1992, or
  - (b) section 38 of SSCB(NI)A 1992.

<sup>F222</sup>(3) . . . . .

- (4) Chapter 17 of this Part provides a partial exemption for a pension to which this section applies in respect of any part of the pension which is attributable to an increase in respect of a child (see section 645).

**Textual Amendments**

- F221** Word in s. 577(2) substituted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 17 para. 9\(4\)\(a\)](#)
- F222** S. 577(3) repealed (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 17 para. 9\(4\)\(b\)](#), [Sch. 42 Pt. 2\(12\)](#)

**578 Taxable pension income**

If section 577 applies, the taxable pension income for a tax year is the full amount of the pension, benefit or allowance accruing in that year irrespective of when any amount is actually paid.

**579 Person liable for tax**

If section 577 applies, the person liable for any tax charged under this Part is the person receiving or entitled to the pension, benefit or allowance.

**CHAPTER 6**

APPROVED RETIREMENT BENEFITS SCHEMES

*Pensions and annuities*

**580 Pensions and annuities**

This section applies to—

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- (a) any pension or annuity paid under a retirement benefits scheme which is either approved or being considered for approval, and
- (b) any annuity acquired using funds held for the purposes of a retirement benefits scheme which is either approved or being considered for approval.

### **581 Taxable pension income**

If section 580 applies, the taxable pension income for a tax year is the full amount of the pension or annuity accruing in that year irrespective of when any amount is actually paid.

### **582 Person liable for tax**

If section 580 applies, the person liable for any tax charged under this Part is the person receiving or entitled to the pension or annuity.

#### *Unauthorised payments*

### **583 Unauthorised payments**

- (1) This section applies to a payment if conditions A, B and C are met.
- (2) But this section does not apply to a payment to which section 623 applies.
- (3) Condition A is that the payment—
  - (a) is made out of funds which are held for the purposes of an approved retirement benefits scheme (“the paying scheme”), but
  - (b) is not expressly authorised—
    - (i) by the rules of the paying scheme, or
    - (ii) by virtue of paragraph 33 of Schedule 6 to FA 1989.
- (4) Condition B is that the payment is not made in the course of payment of a pension or annuity.
- (5) Condition C is that the payment is made to or for the benefit of—
  - (a) an employee, or
  - (b) an ex-spouse of an employee.
- (6) A payment to which this section applies is not to be charged to tax under—
  - (a) section 598 or 599 of ICTA, or
  - (b) the Regulations mentioned in paragraph 8 of Schedule 3 to FA 1971.
- (7) In this section “payment” includes—
  - (a) a transfer of assets, and
  - (b) any other transfer of money’s worth.

### **584 Taxable pension income**

If section 583 applies, the taxable pension income for a tax year is the total amount or value of the payments made in that year.

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## **585 Person liable for tax**

If section 583 applies, the person liable for any tax charged under this Part is the person mentioned in condition C in section 583(5) to whom, or for whose benefit, the payment is made.

*Interpretation etc.*

## **586 Meaning of “retirement benefits scheme” etc.**

- (1) In this Chapter—
  - “retirement benefits scheme” has the meaning given in section 611 of ICTA;
  - “approved”, in relation to such a scheme, means that the scheme is approved by the Board of Inland Revenue for the purposes of—
    - (a) Chapter 2 of Part 2 of FA 1970, or
    - (b) Chapter 1 of Part 14 of ICTA.
- (2) Any reference in this Chapter to a pension or annuity paid under a retirement benefits scheme includes a reference to a pension or annuity paid under a contract which—
  - (a) is made for purposes of the scheme, and
  - (b) is made between—
    - (i) the administrator of the scheme,
    - (ii) the employer, or
    - (iii) the employee or an ex-spouse of the employee,and a third party.
- (3) In subsection (2) the reference to the employer is a reference to the person who is the employer in relation to the scheme.
- (4) In subsection (2)(b)(i) “administrator of the scheme” is to be construed in accordance with section 611AA of ICTA.
- (5) References in this Chapter to approved retirement benefits schemes are extended by section 587 (marine pilots' benefit fund).

## **587 Application to marine pilots' benefit fund**

- (1) In this Chapter the expression “approved retirement benefits scheme” includes a marine pilots' benefit fund which is approved by the Board of Inland Revenue under section 607 of ICTA for the purposes of Chapter 1 of Part 14 of ICTA.
- (2) In any case where the paying scheme for the purposes of section 583(3) is a pilots' benefit fund, the references in section 583(5) to an employee are to be read as references to a member or former member of the fund.
- (3) In this section “marine pilots' benefit fund” means—
  - (a) a fund established under section 15(1)(i) of the Pilotage Act 1983 (c. 21), or
  - (b) any scheme supplementing or replacing any such fund.

## **588 Meaning of “employee” and “ex-spouse”**

- (1) In this Chapter—

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“employee”—

- (a) includes a person who is to be, or has been, an employee, and
- (b) in relation to a company, includes any officer or director of the company and any other person taking part in the management of the affairs of the company;

“ex-spouse” means a party to a marriage which has been dissolved or annulled and, in relation to any person, means the other party to a marriage with that person which has been dissolved or annulled.

(2) For the purposes of the definition of “employee” in subsection (1), “director”, in relation to a company, includes—

- (a) in the case of a company the affairs of which are managed by a board of directors or similar body, a member of that board or body,
- (b) in the case of a company the affairs of which are managed by a single director or similar person, that person,
- (c) in the case of a company the affairs of which are managed by the members themselves, a member of that company,

and includes a person who is to be or has been a director.

## 589 Regulations

The Board of Inland Revenue may make regulations generally for the purpose of carrying the preceding provisions of this Chapter into effect.

## CHAPTER 7

### FORMER APPROVED SUPERANNUATION FUNDS

#### *Annuities*

## 590 Annuities

This section applies to—

- (a) any annuity paid under a former approved superannuation fund, and
- (b) any annuity acquired using funds held for the purposes of a former approved superannuation fund.

## 591 Taxable pension income

If section 590 applies, the taxable pension income for a tax year is the full amount of the annuity paid in that year.

## 592 Person liable for tax

If section 590 applies, the person liable for any tax charged under this Part is the person receiving or entitled to the annuity.

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### *Unauthorised payments*

#### **593 Unauthorised payments: application of section 583**

- (1) Section 583 applies to a payment if—
  - (a) the payment is made out of funds which are held for the purposes of a former approved superannuation fund (“the paying fund”), but
  - (b) it is not expressly authorised—
    - (i) by the rules of the paying fund, or
    - (ii) by virtue of paragraph 33 of Schedule 6 to FA 1989, and
  - (c) conditions B and C in section 583(4) and (5) are met.
- (2) But section 583 does not apply to a payment to which section 623 applies.
- (3) In this section “payment” includes—
  - (a) a transfer of assets, and
  - (b) any other transfer of money’s worth.
- (4) If section 583 applies to a payment by virtue of this section, sections 584, 585 and 588 apply accordingly.

### *Interpretation*

#### **594 Meaning of “former approved superannuation fund”**

- (1) In this Chapter “former approved superannuation fund” means any fund which immediately before 6th April 1980 was an approved superannuation fund for the purposes of section 208 of ICTA 1970.
- (2) But a fund is not a former approved superannuation fund if any of the following things has happened since 5th April 1980—
  - (a) the fund has been approved by the Board of Inland Revenue for the purposes of Chapter 2 of Part 2 of FA 1970,
  - (b) the fund has been approved by the Board for the purposes of Chapter 1 of Part 14 of ICTA, or
  - (c) any sum has been paid to the fund by way of contribution.

## **CHAPTER 8**

### **APPROVED PERSONAL PENSION SCHEMES**

#### *Annuities*

#### **595 Annuities**

This section applies to any annuity acquired using funds held for the purposes of an approved personal pension scheme.

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*Status: Point in time view as at 07/04/2005.*

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## **596 Taxable pension income**

If section 595 applies, the taxable pension income for a tax year is the full amount of the annuity received in that year.

## **597 Person liable for tax**

If section 595 applies, the person liable for any tax charged under this Part is the person receiving or entitled to the annuity.

### *Income withdrawals*

## **598 Income withdrawals**

This section applies to any income withdrawal under approved personal pension arrangements.

## **599 Taxable pension income**

If section 598 applies, the taxable pension income for a tax year is the total amount of the income withdrawals made in that year.

## **600 Person liable for tax**

If section 598 applies, the person liable for any tax charged under this Part is the person receiving or entitled to the income.

### *Unauthorised personal pension payments*

## **601 Unauthorised personal pension payments**

- (1) This section applies to any unauthorised personal pension payment.
- (2) In this section “personal pension payment” means a payment which—
  - (a) is made out of funds which are or have been held for the purposes of a personal pension scheme (“the paying scheme”), and
  - (b) is made to or for the benefit of an individual who has made personal pension arrangements in accordance with the paying scheme (“the individual’s arrangements”).
- (3) For the purposes of this section a personal pension payment is unauthorised if any of conditions A, B and C are met.
- (4) Condition A is that—
  - (a) the paying scheme and the individual’s arrangements are both approved at the time the payment is made, but
  - (b) the payment is not expressly authorised by the rules of the paying scheme.
- (5) Condition B is that—
  - (a) the paying scheme is not approved at the time the payment is made, and
  - (b) at the time the scheme was last approved, the payment would not have been expressly authorised under the scheme’s rules.



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- (6) Condition C is that—
- (a) the individual’s arrangements are not approved at the time the payment is made, and
  - (b) at the time the arrangements were last approved, the payment would not have been expressly authorised under the arrangements.
- (7) In this section “payment” includes—
- (a) a transfer of assets, and
  - (b) any other transfer of money’s worth.

## **602 Taxable pension income**

If section 601 applies, the taxable pension income for a tax year is the total amount or value of the payments made in that year.

## **603 Person liable for tax**

If section 601 applies, the person liable for any tax charged under this Part is the individual who made the arrangements mentioned in section 601(2)(b) to whom or for whose benefit the payment is made, whether or not the individual is the recipient of the payment.

### *Interpretation*

## **604 Meaning of “personal pension scheme” and related expressions**

In this Chapter the following expressions have the same meaning as in Chapter 4 of Part 14 of ICTA (see section 630(1) of ICTA)—

- (a) “approved”;
- (b) “income withdrawal”;
- (c) “personal pension arrangements”;
- (d) “personal pension scheme”.

## **CHAPTER 9**

### **RETIREMENT ANNUITY CONTRACTS**

## **605 Annuities**

This section applies to any annuity paid under a retirement annuity contract.

## **606 Meaning of “retirement annuity contract”**

In this Chapter “retirement annuity contract” means—

- (a) an annuity contract or a trust scheme approved by the Board of Inland Revenue under section 620 of ICTA (qualifying premiums) or under section 621 of ICTA (other approved contracts), or

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- (b) a substituted contract within the meaning of section 622(3) of ICTA (substituted retirement annuity contracts).

#### **607 Taxable pension income**

If section 605 applies, the taxable pension income for a tax year is the full amount of the annuity arising in that year.

#### **608 Person liable for tax**

If section 605 applies, the person liable for any tax charged under this Part is the person receiving or entitled to the annuity.

## **CHAPTER 10**

### **OTHER EMPLOYMENT-RELATED ANNUITIES**

#### **609 Annuities for the benefit of dependants**

- (1) This section applies to any annuity which was granted for consideration consisting in whole or in part of sums which satisfied the conditions for relief under section 273 of ICTA (obligatory contributions to secure an annuity for the benefit of dependants).
- (2) But this section applies to an annuity which arises from a source outside the United Kingdom only if it is paid to a person resident in the United Kingdom.

#### **610 Annuities under sponsored superannuation schemes**

- (1) This section applies to—
  - (a) any annuity paid under a sponsored superannuation scheme, and
  - (b) any annuity acquired using funds held for the purposes of a sponsored superannuation scheme.
- (2) But this section applies to an annuity which arises from a source outside the United Kingdom only if it is paid to a person resident in the United Kingdom.
- (3) This section does not apply to an annuity to which any provision of Chapter 6, 7, 8 or 9 of this Part applies.
- (4) In this section “sponsored superannuation scheme” has the meaning given by section 624(1) of ICTA.

#### **611 Annuities in recognition of another’s services**

- (1) This section applies to any annuity purchased by any person in recognition of another person’s services in any office or employment.
- (2) But this section applies to an annuity which arises from a source outside the United Kingdom only if it is paid to a person resident in the United Kingdom.
- (3) This section does not apply to an annuity to which any provision of Chapter 6, 7, 8 or 9 of this Part applies.

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- (4) For the purposes of this section “office” includes in particular any position which has an existence independent of the person who holds it and may be filled by successive holders.

#### **612 Taxable pension income: UK annuities**

- (1) The taxable pension income for an annuity to which section 609, 610 or 611 applies is determined in accordance with this section if the annuity arises from a source in the United Kingdom.
- (2) The taxable pension income for a tax year is the full amount of the annuity arising in that year.

#### **613 Taxable pension income: foreign annuities**

- (1) The taxable pension income for an annuity to which section 609, 610 or 611 applies is determined in accordance with this section if the annuity arises from a source outside the United Kingdom.
- (2) The taxable pension income for a tax year is [<sup>F223</sup>the full amount of the annuity arising in the tax year, but subject to subsections (3) and (4).]
- [<sup>F224</sup>(3) The full amount of the annuity arising in the tax year is to be calculated on the basis that the annuity is 90% of its actual amount, unless as a result of subsection (4) the annuity is charged in accordance with section 832 of ITTOIA 2005 (relevant foreign income charged on the remittance basis).
- (4) The annuity is treated as relevant foreign income for the purposes of Chapters 2 and 3 of Part 8 of that Act (relevant foreign income: remittance basis and deductions and reliefs).
- (5) But if the annuity arises in the Republic of Ireland, section 839 of that Act (annual payments payable out of relevant foreign income) applies with the omission of condition B and subsection (5)(a).
- (6) See also Chapter 4 of that Part (unremittable income).]

#### **Textual Amendments**

**F223** Words in s. 613(2) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 607\(2\)](#) (with Sch. 2)

**F224** S. 613(3)-(6) substituted for s. 613(3)(4) (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 607\(3\)](#) (with Sch. 2)

#### **614 Person liable for tax**

If section 609, 610 or 611 applies, the person liable for any tax charged under this Part is the person receiving or entitled to the annuity.

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## CHAPTER 11

### CERTAIN OVERSEAS GOVERNMENT PENSIONS PAID IN THE UK

#### **615 Certain overseas government pensions paid in the United Kingdom**

- (1) This section applies to a pension if conditions A, B and C are met.
- (2) Condition A is that the pension—
  - (a) is payable—
    - (i) to a person who has been employed in overseas government service, or
    - (ii) to the widow, widower, child, relative or dependant of a person who has been employed in overseas government service, and
  - (b) is payable in respect of that service.
- (3) Condition B is that the pension—
  - (a) is payable in the United Kingdom, and
  - (b) is payable to a person who is resident in the United Kingdom.
- (4) Condition C is that the pension is payable by or on behalf of the government of—
  - (a) a country which forms part of Her Majesty’s dominions,
  - (b) any other country which is for the time being mentioned in Schedule 3 to the British Nationality Act 1981 (c. 61), or
  - (c) any territory under Her Majesty’s protection.
- (5) But condition C is not met if the pension is payable out of the public revenue of the United Kingdom or Northern Ireland.
- (6) In condition A the references to a person being employed in overseas government service are to the person being employed outside the United Kingdom—
  - (a) in the service of the Crown, or
  - (b) in service under the government of a country or territory which falls within subsection (4).
- (7) In this Chapter “pension” includes a pension which is paid voluntarily or is capable of being discontinued.

#### **616 Taxable pension income**

If section 615 applies, the taxable pension income for a tax year is the full amount of the pension accruing in that year irrespective of when any amount is actually paid.

#### **617 Deduction allowed from taxable pension income**

A deduction of 10% is allowed from an amount of taxable pension income determined under section 616 (see section 567).

#### **618 Person liable for tax**

If section 615 applies, the person liable for any tax charged under this Part is the person receiving or entitled to the pension.

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## CHAPTER 12

### HOUSE OF COMMONS MEMBERS' FUND

#### **619 The House of Commons Members' Fund**

This section applies to any periodical payment granted out of—

- (a) the House of Commons Members' Fund,
- (b) sums appropriated from that Fund, or
- (c) income from sums appropriated from that Fund.

#### **620 Meaning of “House of Commons Members' Fund”**

In this Chapter “House of Commons Members' Fund” means the fund with that name established by section 1 of the House of Commons Members' Fund Act 1939 (c. 49).

#### **621 Taxable pension income**

If section 619 applies, the taxable pension income for a tax year is the total amount of the payments made in that year.

#### **622 Person liable for tax**

If section 619 applies, the person liable for any tax charged under this Part is the person receiving or entitled to the payments.

## CHAPTER 13

### RETURN OF SURPLUS EMPLOYEE ADDITIONAL VOLUNTARY CONTRIBUTIONS

#### **623 Return of surplus employee additional voluntary contributions**

- (1) This section applies to a payment if conditions A, B and C are met.
- (2) Condition A is that the payment is made out of funds which are or have been held for the purposes of—
  - (a) a scheme which is or has been an exempt approved scheme, or
  - (b) a relevant statutory scheme established under a public general Act.
- (3) Condition B is that the payment is made under a duty to return surplus funds.
- (4) Condition C is that the payment is made to or for the benefit of an employee.
- (5) A payment to which this section applies is not to be charged to tax under—
  - (a) section 598 or 599 of ICTA, or
  - (b) the Regulations mentioned in paragraph 8 of Schedule 3 to FA 1971.
- (6) In this section “payment” includes—
  - (a) a transfer of assets, and
  - (b) any other transfer of money's worth.

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## **624 Taxable pension income**

If section 623 applies, the taxable pension income for a tax year is the amount equal to the total amount or value of the payments made in that year, grossed up by reference to the basic rate for that year.

## **625 Person liable for tax**

If section 623 applies, the person liable for any tax charged under this Part is the employee mentioned in condition C in section 623(4) to whom or for whose benefit the payment is made.

## **626 Income tax treated as paid**

- (1) An employee who is liable for the tax charged on a payment to which section 623 applies is treated as having paid income tax at the basic rate on the amount chargeable.
- (2) The income tax treated as paid under subsection (1) is not repayable.

## **627 Meaning of “grossing up”**

- (1) In section 624 “grossing up” by reference to the basic rate means calculating the amount (“the gross amount”) which after deduction of income tax at the basic rate would equal the amount to be grossed up (“the net amount”).
- (2) The gross amount is the sum of the net amount and the tax deducted.

## **628 Interpretation**

- (1) In this Chapter—
  - “employee”—
    - (a) includes a person who is to be, or has been, an employee, and
    - (b) in relation to a company, includes any officer or director of the company and any other person taking part in the management of the affairs of the company;

“exempt approved scheme” has the meaning given in section 592(1) of ICTA;

“relevant statutory scheme” has the meaning given in section 611A(1) of ICTA.
  - (2) For the purposes of the definition of “employee” in subsection (1), “director”, in relation to a company, includes—
    - (a) in the case of a company the affairs of which are managed by a board of directors or similar body, a member of that board or body,
    - (b) in the case of a company the affairs of which are managed by a single director or similar person, that person,
    - (c) in the case of a company the affairs of which are managed by the members themselves, a member of that company,

and includes a person who is to be or has been a director.
  - (3) If section 623 applies to a payment made out of funds which are or have been held for the purposes of a relevant statutory scheme established under a public general Act, any reference in this Chapter to an employee includes references to a person who holds

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an office, to a person who is to hold an office and to a person who has ceased to hold an office.

This is without prejudice to subsection (1).

- (4) For the purposes of subsection (3) “office” includes in particular any position which has an existence independent of the person who holds it and may be filled by successive holders.

## CHAPTER 14

### PRE-1973 PENSIONS PAID UNDER THE OVERSEAS PENSIONS ACT 1973

#### 629 Pre-1973 pensions paid under the Overseas Pensions Act 1973

- (1) This section applies to a pension if—
- (a) it is paid under section 1 of OPA 1973 (whether or not paid out of a fund established under a scheme made under that section),
  - (b) it is a pre-1973 pension, and
  - (c) it is paid to—
    - (i) the original pensioner, or
    - (ii) the widow or widower of the original pensioner.
- (2) But this section does not apply to a part of a pension which is paid because the Pensions (Increase) Act 1971 (c. 56) applies to it (and accordingly section 569 applies to that part of the pension).
- (3) Chapter 18 of this Part provides an exemption where a pension to which this section applies is paid to a person who is not resident in the United Kingdom (see sections 647 and 651).

#### 630 Interpretation

- (1) For the purposes of this Chapter a person is the “original pensioner” in relation to a pension if—
- (a) the pension is payable by virtue of the person’s service, and
  - (b) the person retired from that service before 6th April 1973.
- (2) For the purposes of this Chapter a pension is a “pre-1973 pension” if, immediately before 6th April 1973—
- (a) the pension was payable to—
    - (i) the original pensioner, or
    - (ii) the widow or widower of the original pensioner, and
  - (b) that person was resident in the United Kingdom.

#### 631 Taxable pension income

- (1) If section 629 applies, the taxable pension income for a tax year is [<sup>F225</sup>the full amount of the pension income arising in the tax year] .

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- [<sup>F226</sup>(2) The full amount of the pension income arising in the tax year is to be calculated on the basis that the pension is 90% of its actual amount.
- (3) The pension income is treated as relevant foreign income for the purposes of section 838 of that Act (expenses attributable to collection or payment of relevant foreign income).]

#### Textual Amendments

- F225** Words in s. 631(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 608\(2\)](#) (with [Sch. 2](#))
- F226** S. 631(2)(3) substituted for s. 631(2) (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 608\(3\)](#) (with [Sch. 2](#))

### 632 Person liable for tax

If section 629 applies, the person liable for any tax charged under this Part is the person receiving or entitled to the pension.

## CHAPTER 15

### VOLUNTARY ANNUAL PAYMENTS

### 633 Voluntary annual payments

- (1) This section applies to an annual payment which—
- is paid voluntarily, or
  - is capable of being discontinued,
- if conditions A and B are met.
- (2) Condition A is that the payment is paid to—
- a former employee or a former office-holder,
  - the widow or widower of a former employee or former office-holder, or
  - any child, relative or dependant of a former employee or a former office-holder.
- (3) Condition B is that the payment is paid by or on behalf of—
- the person—
    - who employed the former employee, or
    - under whom the former office-holder held the office, or
  - the successors of that person.
- (4) But this section applies to a payment which is paid by or on a behalf of a person who is outside the United Kingdom only if it is paid to a person resident in the United Kingdom.
- (5) In this section “office” includes in particular any position which has an existence independent of the person who holds it and may be filled by successive holders.



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### **634 Taxable pension income: UK voluntary annual payments**

- (1) The taxable pension income for payments to which section 633 applies is determined in accordance with this section if the payments are made by or on behalf of a person who is in the United Kingdom.
- (2) The taxable pension income for a tax year is the full amount of the payments accruing in that year irrespective of when any amount is actually paid.

### **635 Taxable pension income: foreign voluntary annual payments**

- (1) The taxable pension income for payments to which section 633 applies is determined in accordance with this section if the payments are made by or on behalf of a person who is outside the United Kingdom.
- (2) The taxable pension income for a tax year is [<sup>F227</sup>the full amount of the pension income arising in the tax year, but subject to subsections (3) and (4)] .
- [<sup>F228</sup>(3) The full amount of the pension income arising in the tax year is to be calculated on the basis that the pension is 90% of its actual amount, unless as a result of subsection (4) the pension income is charged in accordance with section 832 of ITTOIA 2005 (relevant foreign income charged on the remittance basis).
- (4) That pension income is treated as relevant foreign income for the purposes of Chapters 2 and 3 of Part 8 of that Act (relevant foreign income: remittance basis and deductions and reliefs).
- (5) But if that pension income arises in the Republic of Ireland, section 839 of that Act (annual payments payable out of relevant foreign income) applies with the omission of condition B and subsection (5)(a).
- (6) See also Chapter 4 of that Part (unremittable income).]

#### **Textual Amendments**

**F227** Words in s. 635(2) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 609\(2\)](#) (with [Sch. 2](#))

**F228** S. 635(3)-(6) substituted for s. 635(3) (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 609\(3\)](#) (with [Sch. 2](#))

### **636 Person liable for tax**

If section 633 applies, the person liable for any tax charged under this Part is the person receiving or entitled to the payment.

## **CHAPTER 16**

### **EXEMPTION FOR CERTAIN LUMP SUMS**

### **637 Exemption for lump sums provided under certain pension schemes etc.**

- (1) No liability to income tax arises on a lump sum provided under—
  - (a) approved personal pension arrangements,

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- (b) a tax-exempt pension scheme, or
  - (c) a retirement annuity contract.
- (2) But subsection (1)(b) applies to a lump sum paid in compensation for loss of office or employment, or for loss or diminution of earnings, only if—
- (a) the payment is properly regarded as earned by past services, or
  - (b) the loss of office or employment, or the loss or diminution of earnings, is due to ill-health.
- (3) Subsection (1)(b) does not apply to a lump sum to which section 583 (approved retirement benefits schemes: unauthorised payments) or section 623 (return of surplus AVCs) applies.
- This includes cases where section 583 applies by virtue of section 593.
- (4) Subsection (1)(c) applies to a lump sum only if it is provided in consequence of a right which meets the conditions in paragraphs (a) and (b) of section 620(3) of ICTA.
- (5) In this section—
- “approved personal pension arrangements” has the same meaning as in Chapter 4 of Part 14 of ICTA (see section 630(1) of ICTA);
  - “earnings” means earnings or amounts treated as earnings which constitute employment income (see section 7(2)(a) or (b));
  - “office” includes in particular any position which has an existence independent of the person who holds it and may be filled by successive holders;
  - “retirement annuity contract” has the same meaning as in Chapter 9 of this Part (see section 606).
- (6) In this section “tax-exempt pension scheme” means—
- (a) a retirement benefits scheme which is—
    - (i) an approved scheme,
    - (ii) a relevant statutory scheme, or
    - (iii) a scheme set up by a government outside the United Kingdom for the benefit, or primarily for the benefit, of its employees, or
  - (b) any such scheme or fund as was described in section 221(1) and (2) of ICTA 1970 (schemes to which payments could be made without charge to tax under section 220 of that Act).
- (7) For the purposes of subsection (6)—
- “relevant statutory scheme” has the meaning given in section 611A(1) of ICTA;
  - “retirement benefits scheme” has the meaning given in section 611 of ICTA;
  - “approved”, in relation to a retirement benefits scheme, means that the scheme is approved by the Board of Inland Revenue for the purposes of—
    - (a) Chapter 2 of Part 2 of FA 1970, or
    - (b) Chapter 1 of Part 14 of ICTA.

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## CHAPTER 17

### EXEMPTIONS: ANY TAXPAYER

#### 638 Awards for bravery

- (1) No liability to income tax arises on a pension or annuity if it is paid to the holder of an award for bravery in respect of the award.
- (2) In this section “award for bravery” means—
  - the Victoria Cross,
  - the George Cross,
  - the Albert Medal,
  - the Edward Medal,
  - the Military Cross,
  - the Distinguished Flying Cross,
  - the Distinguished Conduct Medal,
  - the Conspicuous Gallantry Medal,
  - the Distinguished Service Medal,
  - the Military Medal,
  - the Distinguished Flying Medal.

#### 639 Pensions in respect of death due to military or war service

- [<sup>F229</sup>(1)] No liability to income tax arises on these pensions and allowances—
- (a) a pension or allowance payable by or on behalf of [<sup>F230</sup>the Ministry of Defence] under so much of [<sup>F231</sup>instrument specified in subsection (2),] as relates to death due to—
    - (i) service in the armed forces of the Crown,
    - (ii) wartime service in the merchant navy, or
    - (iii) war injuries;
  - (b) a pension or allowance—
    - (i) payable by the Ministry of Defence in respect of death due to peacetime service in the armed forces of the Crown before 3rd September 1939, and
    - (ii) payable at rates, and subject to conditions, similar to those of a pension within paragraph (a);
  - (c) a pension or allowance—
    - (i) payable under the law of a country other than the United Kingdom, and
    - (ii) of a character substantially similar to a pension within paragraph (a) or (b).

- [<sup>F232</sup>(2)] The instruments referred to in subsection (1)(a) are—
- Defence (Local Defence Volunteers) Regulations 1940 (S.R. & O. 1940/748),
  - War Pensions (Coastguards) Scheme 1944 (S.R. & O. 1944/500),
  - War Pensions (Naval Auxiliary Personnel) Scheme 1964 (S.I. 1964/1985),
  - Pensions (Polish Forces) Scheme 1964 (S.I. 1964/2007),
  - War Pensions (Mercantile Marine) Scheme 1964 (S.I. 1964/2058),

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Order by Her Majesty concerning pensions and other grants in respect of disablement or death due to service in the Home Guard (1964 Cmnd. 2563),  
 Order by Her Majesty concerning pensions and other grants in respect of disablement or death due to service in the Home Guard after 27th April 1952 (1964 Cmnd. 2564),  
 Order by Her Majesty concerning pensions and other grants in respect of disablement or death due to service in the Ulster Defence Regiment (1971 Cmnd. 4567),  
 Personal Injuries (Civilians) Scheme 1983 (S.I. 1983/686),  
 Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (S.I. 1983/883).

(3) The Treasury may by order amend subsection (2).]

#### Textual Amendments

**F229** S. 639 renumbered as s. 639(1) (retrospectively) by [Finance Act 2005 \(c. 7\), s. 19\(3\)\(8\)](#)

**F230** Words in s. 639(a) substituted (retrospectively) by [Finance Act 2005 \(c. 7\), s. 19\(3\)\(a\)\(8\)](#)

**F231** Words in s. 639(a) substituted (retrospectively) by [Finance Act 2005 \(c. 7\), s. 19\(3\)\(b\)\(8\)](#)

**F232** S. 639(2)(3) inserted (retrospectively) by [Finance Act 2005 \(c. 7\), s. 19\(3\)\(8\)](#)

#### 640 Exemption under section 639 where income withheld

- (1) This section applies if—
- (a) an individual is entitled to both of the following—
    - (i) a pension or allowance mentioned in section 639 (“pension A”), and
    - (ii) any other pension or allowance (“pension B”), and
  - (b) the whole or a part of pension A is withheld because of the individual’s entitlement to pension B.
- (2) In such a case, an amount of pension B equal to the withheld amount of pension A is treated for the purposes of section 639 as part of pension A.

#### [<sup>F233</sup>640A Lump sums provided under armed forces early departure scheme

No liability to income tax arises on a lump sum provided under a scheme established by the Armed Forces Early Departure Payments Scheme Order 2005 (S.I. 2005/437).]

#### Textual Amendments

**F233** S. 640A inserted (with effect in accordance with s. 19(9) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 19\(5\)](#)

#### 641 Wounds and disability pensions

- (1) No liability to income tax arises on—
- (a) a wounds pension granted to a member of the armed forces of the Crown;
  - (b) retired pay of a disabled officer granted on account of medical unfitness attributable to or aggravated by service in the armed forces of the Crown;

*Status: Point in time view as at 07/04/2005.*

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- (c) a disablement or disability pension granted to a member of the armed forces of the Crown, other than a commissioned officer, on account of medical unfitness attributable to or aggravated by service in the armed forces of the Crown;
  - (d) a disablement pension granted to a person who has been employed in the nursing services of any of the armed forces of the Crown on account of medical unfitness attributable to or aggravated by service in the armed forces of the Crown;
  - (e) an injury or disablement pension payable under any scheme made under—
    - (i) the Injuries in War (Compensation) Act 1914 (c. 30), or
    - (ii) the Injuries in War (Compensation) Act 1914 (Session 2) (5 & 6 Geo. 5 c. 18);
  - (f) an injury or disablement pension payable under any War Risks Compensation Scheme for the Mercantile marine;
  - (g) a pension—
    - (i) granted to a person on account of disablement, and
    - (ii) payable under any scheme made under section 3, 4 or 5 of the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 (c. 83).
  - [<sup>F234</sup>(h) a benefit under a scheme established by an order under section 1(2) of the Armed Forces (Pensions and Compensation) Act 2004 payable to a person by reason of his illness or injury—
    - (i) by way of a lump sum, or
    - (ii) following the termination of the person's service in the armed forces or reserve forces.]
- (2) But if the Secretary of State certifies that a pension or retired pay of a kind listed in subsection (1) is only partly attributable to disablement or disability, that subsection applies only to the part attributable to disablement or disability.

#### Textual Amendments

**F234** S. 641(1)(h) inserted (with effect in accordance with s. 19(9) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 19\(6\)](#)

### 642 Compensation for National-Socialist persecution

No liability to income tax arises on a pension or annuity which is payable under any special provision for victims of National-Socialist persecution which is made by the law of—

- (a) the Federal Republic of Germany or any part of it, or
- (b) Austria.

### 643 Malawi, Trinidad and Tobago and Zambia government pensions

- (1) No liability to income tax arises on—
- (a) a Malawi government pension,
  - (b) a Trinidad and Tobago government pension, or
  - (c) a Zambia government pension,
- if conditions A, B and C are met.

*Status: Point in time view as at 07/04/2005.*

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- (2) Condition A is that the pension is paid to—
- (a) the original pensioner, or
  - (b) the widow or widower of the original pensioner.
- (3) Condition B is that the pension is now paid under section 1 of OPA 1973 (whether or not it is paid out of a fund established under a scheme made under that section).
- (4) Condition C is that, at the time the pension is paid, provision is made by double taxation relief arrangements which would exempt the pension from income tax in the United Kingdom if the pension were still paid by the relevant government (rather than under section 1 of OPA 1973).
- (5) Subsection (1) does not apply to any part of a pension which is paid because the Pensions (Increase) Act 1971 (c. 56) applies to it.
- (6) In this section—
- “double taxation relief arrangements” means arrangements specified in an Order in Council making any such provisions as are referred to in section 788 of ICTA;
- “Malawi government pension” means a pension payable by the government of Malawi for services rendered—
- (a) to the government of Malawi, or
  - (b) to the government of the Federation of Rhodesia and Nyasaland,
- in the discharge of government functions;
- “Trinidad and Tobago government pension” means a pension payable by the government of Trinidad and Tobago for services rendered to the government of Trinidad and Tobago in the discharge of governmental functions;
- “Zambia government pension” means a pension payable by the government of Zambia for services rendered—
- (a) to the government of Zambia,
  - (b) to the government of Northern Rhodesia, or
  - (c) to the government of the Federation of Rhodesia and Nyasaland,
- in the discharge of governmental functions.
- (7) For the purposes of this section a person is the “original pensioner” in relation to a pension if—
- (a) the pension is payable by virtue of the person’s service, and
  - (b) the person retired from that service before 6th April 1973.

#### **644 Pensions payable where employment ceased due to disablement**

- (1) No liability to income tax arises on the exempt amount of a disablement pension.
- (2) For the purposes of this section a pension is a “disablement pension” if—
- (a) the pension is payable because a person has ceased to hold an employment or office because of disablement, and
  - (b) that disablement is attributable to—
    - (i) performance of the duties of the employment or office, or
    - (ii) war injuries.

*Status: Point in time view as at 07/04/2005.*

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But “disablement pension” does not include any pension to which section 580 or 590 applies.

- (3) The exempt amount of a disablement pension is determined in accordance with the following steps.

*Step 1*

Determine what pension would have been payable if—

- (a) the person had ceased to hold the employment or office because of the disablement mentioned in subsection (2)(a), but
- (b) the disablement had not been attributable to—
  - (i) performance of the duties of the employment or office, or
  - (ii) war injuries.

*Step 2*

If no pension would have been payable, the exempt amount is the amount of the disablement pension.

If a pension of a smaller amount than the disablement pension would have been payable, the exempt amount is the amount by which the disablement pension exceeds the smaller amount.

In any other case, the exempt amount is nil.

- (4) For the purposes of this section “office” includes in particular any position which has an existence independent of the person who holds it and may be filled by successive holders.

<sup>F235</sup> **644A Health and employment insurance payments**

- (1) No liability to income tax arises in respect of a pension or annuity payment if or to the extent that—
  - (a) were the payment an annual payment falling within Chapter 7 of Part 5 of ITTOIA 2005, it would be exempt from income tax under section 735 of that Act (health and employment insurance payments), and
  - (b) it meets conditions A and B.
- (2) Condition A is that the payments are made—
  - (a) to a person (“the pensioner”) who made payments or contributions in respect of premiums under an insurance policy which another person took out wholly or partly for the pensioner's benefit, or
  - (b) to the pensioner's husband or wife.
- (3) Condition B is that the payments are attributable on a just and reasonable basis to the payments or contributions in respect of premiums.]

**Textual Amendments**

**F235** S. 644A inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 610](#) (with [Sch. 2](#))

*Status: Point in time view as at 07/04/2005.*

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#### **645 Social security pensions: increases in respect of children**

- (1) No liability to income tax arises on a part of a social security pension which is attributable to an increase in respect of a child.
- (2) In this section “social security pension” means—
  - (a) any pension, benefit or allowance to which section 577 applies, and
  - (b) any pension, benefit or allowance which—
    - (i) is payable under the law of a country or territory outside the United Kingdom, and
    - (ii) is substantially similar in character to a pension, benefit or allowance to which section 577 applies.

#### **646 Former miners etc: coal and allowances in lieu of coal**

- (1) No liability to income tax arises on—
  - (a) the provision of coal or smokeless fuel—
    - (i) to a former colliery worker, or
    - (ii) to the widow or widower of a former colliery worker, or
  - (b) any allowance paid to such a person in lieu of such provision, if the condition in subsection (2) is met.
- (2) That condition is that the amount of coal or fuel provided or in respect of which the allowance is paid does not substantially exceed the amount reasonably required for personal use.
- (3) That condition is assumed to be met unless the contrary is shown.
- (4) In this section “former colliery worker” means—
  - (a) any person who has ceased to be employed as a coal miner, or
  - (b) any other person who has ceased to be employed at or about a colliery otherwise than in clerical, administrative or technical work.

#### **[<sup>F236</sup>646A] Foreign pensions of consular employees**

- (1) No liability to income tax arises in respect of foreign pension income of a consular officer or employee in the United Kingdom for a foreign state if—
  - (a) Her Majesty by Order in Council directs that this section applies to the foreign state for the purpose of giving effect to a reciprocal arrangement with that state, and
  - (b) the officer or employee meets conditions A to C.
- (2) Condition A is that the officer or employee is not—
  - (a) a British citizen,
  - (b) a British overseas territories citizen,
  - (c) a British National (Overseas), or
  - (d) a British Overseas citizen.
- (3) Condition B is that the officer or employee is not engaged in any trade, profession, vocation or employment in the United Kingdom, otherwise than as a consular officer or employee of the state in question.



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- (4) Condition C is that the officer or employee—
- (a) is a permanent employee of that state, or
  - (b) was not ordinarily resident in the United Kingdom immediately before becoming a consular officer or employee in the United Kingdom of that state.
- (5) In this section—
- “consular officer or employee” includes any person employed for the purposes of the official business of a consular officer at—
- (a) any consulate,
  - (b) any consular establishment, or
  - (c) any other premises used for those purposes,
- “foreign pension income” means—
- (a) income to which section 573 or 629 applies, and
  - (b) income arising from a source outside the United Kingdom to which section 609, 610, 611 or 633 applies; and
- “reciprocal agreement” has the same meaning as in section 302.
- (6) Section 302(5) to (7) apply to an Order under subsection (1) and the operation of this section as they apply to an Order under section 302(1) and the operation of section 302.]

#### Textual Amendments

**F236** S. 646A inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 611](#) (with [Sch. 2](#))

## CHAPTER 18

### EXEMPTIONS: NON-UK RESIDENT TAXPAYERS

#### **647 Introduction and meaning of “foreign residence condition” etc.**

- (1) The provisions of this Part provide that no liability to income tax arises on certain kinds of pensions if the foreign residence condition is met.
- (2) The foreign residence condition is met in relation to a pension if the pension is payable to a person who is not resident in the United Kingdom.
- (3) For the purposes of the foreign residence condition, a person is taken to be not resident in the United Kingdom only if—
  - (a) a person makes a claim to the Board of Inland Revenue that the person is not resident, and
  - (b) the Board is satisfied that the person is not resident.
- (4) In this Chapter “pension” includes—
  - (a) a gratuity or any sum payable on or in respect of death,
  - (b) a return of contributions, and
  - (c) any interest or other addition included in a return of contributions.

*Status: Point in time view as at 07/04/2005.*

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#### **648 The Central African Pension Fund**

- (1) No liability to income tax arises on a pension which is paid from the Central African Pension Fund if the foreign residence condition is met.
- (2) In this section “the Central African Pension Fund” means the fund established under that name by section 24 of the Federation of Rhodesia and Nyasaland (Dissolution) Order in Council 1963 (S.I. 1963/2085).

#### **649 Commonwealth government pensions**

- (1) No liability to income tax arises on a pension paid out of a fund which is established—
  - (a) in the United Kingdom,
  - (b) by a Commonwealth government,
  - (c) for the sole purpose of providing pensions payable in respect of service under that government,
 if the foreign residence condition is met.
- (2) In this section “Commonwealth government” means—
  - (a) the government of a territory or country mentioned in subsection (3),
  - (b) the government of any part of a territory or country mentioned in subsection (3), or
  - (c) a government constituted for two or more of the territories or countries mentioned in subsection (3).
- (3) The territories and countries referred to in subsection (2) are—
  - (a) a country mentioned in Schedule 3 to the British Nationality Act 1981 (c. 61) apart from Australia, Canada, New Zealand, India, Sri Lanka and Cyprus,
  - (b) an associated state,
  - (c) a British overseas territory,
  - (d) a protectorate,
  - (e) a protected state, and
  - (f) a United Kingdom trust territory.
- (4) In subsection (2)(c) the reference to a government constituted for two or more of the territories or countries mentioned in subsection (3) includes a reference to any authority established for the purpose of providing or administering services which are common to, or relate to matters of common interest to, two or more of those territories or countries.
- (5) In subsection (3)(f) “United Kingdom trust territory” means a territory administered by the government of the United Kingdom under the trusteeship system of the United Nations.

#### **650 Oversea Superannuation Scheme**

- (1) No liability to income tax arises on a pension which is paid under the Oversea Superannuation Scheme (formerly known as the Colonial Superannuation Scheme) if the foreign residence condition is met.
- (2) For the purposes of subsection (1) a pension is paid under the Oversea Superannuation Scheme if—

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- (a) the pension is paid under the Scheme as it has effect (by reason of section 2(4A) of OPA 1973) as a scheme under section 2 of OPA 1973, or
- (b) the pension is paid under a scheme which—
  - (i) the Secretary of State has made under section 2(1) of OPA 1973, and
  - (ii) corresponds to the Oversea Superannuation Scheme.

## **651 Overseas Pensions Act 1973**

- (1) No liability to income tax arises on a pension which is paid under section 1 of OPA 1973 if the foreign residence condition is met.
- (2) Subsection (1) applies whether or not the pension is paid out of a fund established under a scheme made under section 1 of OPA 1973.
- (3) But subsection (1) does not apply to any part of a pension paid because the Pensions (Increase) Acts apply to it.
- (4) In this section “the Pensions (Increase) Acts” means—
  - (a) the Pensions (Increase) Act 1971 (c. 56), and
  - (b) any Act passed after that Act for purposes which correspond to the purposes of that Act.

## **652 Overseas Service Act 1958**

- (1) No liability to income tax arises on a pension—
  - (a) which is paid under the authority of the Overseas Service Act 1958 (c. 14), and
  - (b) which the Secretary of State certifies to be attributable to the employment of a person in the public services of an overseas territory,if the foreign residence condition is met.
- (2) If the Secretary of State certifies that only part of a pension paid under the authority of the 1958 Act is attributable to the employment of a person in the public services of an overseas territory, subsection (1) applies only to that part of the pension.
- (3) For the purposes of subsections (1) and (2) a pension is paid under the authority of the 1958 Act if condition A or B is met.
- (4) Condition A is that the pension is paid under either of the following—
  - (a) an order made under section 2 of the 1958 Act, or
  - (b) section 4(2) of the 1958 Act,as it has effect (by reason of section 2(3) of OPA 1973) as a scheme under section 2 of OPA 1973.
- (5) Condition B is that the pension is paid under a scheme which the Secretary of State—
  - (a) has made under section 2(1) of OPA 1973, and
  - (b) has certified to correspond to—
    - (i) an order made under section 2 of the 1958 Act, or
    - (ii) section 4(2) of the 1958 Act.
- (6) For the purposes of this section, a person is taken to be employed in the public service of an overseas territory at any time when—

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- (a) the person is employed in any capacity under the government of that territory, or under any municipal or other local authority in it,
  - (b) the person is employed in circumstances not falling within paragraph (a), by a body corporate established for any public purpose in that territory by an enactment of a legislature empowered to make laws for that territory, or
  - (c) the person is the holder of a public office in that territory in circumstances not falling within paragraph (a) or (b).
- (7) In subsection (6) references to the government of an overseas territory include references to—
- (a) a government constituted for two or more overseas territories, and
  - (b) any authority established for the purpose of providing or administering services which are common to, or relate to matters of common interest to, two or more such territories.
- (8) In this section—
- “the 1958 Act” means the Overseas Service Act 1958 (c. 14);
  - “certified” means certified for the purposes of ICTA 1970, ICTA or this Act.

### **653 Overseas Service Pensions Fund**

- (1) No liability to income tax arises on a pension which is paid out of the Overseas Service Pensions Fund if the foreign residence condition is met.
- (2) In this section “the Overseas Service Pensions Fund” means the fund with that name established under section 7(1) of the Overseas Aid Act 1966 (c. 21).
- (3) In this section “pension” includes not only the things mentioned in section 647(4) but also any sum payable in respect of ill-health.

### **654 The Pensions (India, Pakistan and Burma) Act 1955**

- (1) No liability to income tax arises on a pension paid under the authority of the Pensions (India, Pakistan and Burma) Act 1955 (c. 22) if the foreign residence condition is met.
- (2) A pension is paid under the authority of the 1955 Act if—
  - (a) the pension is paid under the 1955 Act as it has effect (by reason of section 2(3) of OPA 1973) as a scheme under section 2 of OPA 1973, or
  - (b) the pension is paid under a scheme which the Secretary of State—
    - (i) has made under section 2(1) of OPA 1973, and
    - (ii) has certified to correspond to the provision made under the 1955 Act.
- (3) This section does not apply to any part of a pension paid because the Pensions (Increase) Acts apply to it.
- (4) In this section—
  - “the 1955 Act” means the Pensions (India, Pakistan and Burma) Act 1955 (c. 22);
  - “certified” means certified for the purposes of ICTA 1970, ICTA or this Act;
  - “the Pensions (Increase) Acts” means—
    - (a) the Pensions (Increase) Act 1971 (c. 56), and

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- (b) any Act passed after that Act for purposes which correspond to the purposes of that Act.

## PART 10

### SOCIAL SECURITY INCOME

#### CHAPTER 1

##### INTRODUCTION

### 655 Structure of Part 10

- (1) The structure of this Part is as follows—

Chapter 2—

- (a) imposes the charge to tax on social security income, and
- (b) provides for deductions to be made from the amount of income chargeable;

Chapter 3 sets out the UK social security benefits which are charged to tax under this Part and identifies—

- (a) the amount of income chargeable to tax for a tax year, and
- (b) the person liable to pay any tax charged;

Chapters 4 and 5 deal with exemptions from the charge to tax on UK social security benefits (whether under this Part or any other provision);

Chapters 6 and 7 make provision about foreign benefits.

- (2) For other provisions about the taxation of social security benefits, see—  
section 151 of FA 1996 (power for the Treasury to make orders about the taxation of benefits payable under Government pilot schemes);  
[<sup>F237</sup>section 781 of ITTOIA 2005 (exemption from income tax for payments under New Deal 50plus);  
section 782 of ITTOIA 2005 (exemption from income tax for payments under employment zone programmes).]
- (3) For the charge to tax on social security pensions, see Part 9 (pension income).

#### Textual Amendments

**F237** Words in s. 655(2) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 612](#) (with [Sch. 2](#))

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## CHAPTER 2

### TAX ON SOCIAL SECURITY INCOME

#### 656 Nature of charge to tax on social security income

- (1) The charge to tax on social security income is a charge to tax on that income excluding any exempt income.
- (2) “Exempt income” is social security income on which no liability to income tax arises as a result of any provision of Chapter 4, 5 or 7 of this Part.

This definition applies for the purposes of this Part.

#### 657 Meaning of “social security income”, “taxable benefits” etc.

- (1) This section defines—
  - “social security income” for the purposes of the Tax Acts, and
  - “taxable benefits”, “Table A” and “Table B” for the purposes of this Part.
- (2) “Social security income” means—
  - (a) the United Kingdom social security benefits listed in Table A,
  - (b) the United Kingdom social security benefits listed in Table B,
  - (c) the foreign benefits to which section 678 applies, and
  - (d) the foreign benefits to which section 681(2) applies.
- (3) “Taxable benefits” means—
  - (a) the United Kingdom social security benefits listed in Table A, and
  - (b) the foreign benefits to which section 678 applies.
- (4) Subsections (2) and (3) are subject to section 660(2).
- (5) “Table A” means Table A in section 660.
- (6) “Table B” means Table B in section 677.

#### 658 Amount charged to tax

- (1) The amount of social security income which is charged to tax under this Part for a particular tax year is as follows.
- (2) In relation to a taxable benefit, the amount charged to tax is the net taxable social security income for the tax year.
- (3) The net taxable social security income for a taxable benefit for a tax year is given by the formula—

### TSSI- PGD

where—

TSSI means the amount of taxable social security income for that benefit for that year (see subsections (4) to (7)), and

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PGD means the amount of the deduction (if any) allowed from the benefit under Part 12 (payroll giving).

- (4) In relation to bereavement allowance, carer's allowance, incapacity benefit and income support (which are listed in Table A), the amount of taxable social security income is determined in accordance with section 661.
- (5) In relation to any other benefit listed in Table A, the amount of taxable social security income is the amount of the benefit that falls to be charged to tax.
- (6) In relation to foreign benefits to which section 678 applies, the amount of taxable social security income is determined in accordance with section 679.
- (7) In determining for the purposes of this Act the amount of taxable social security income, any exempt income is to be excluded.

## 659 Person liable for tax

The person liable for any tax charged under this Part is identified in—

- (a) section 662 (UK benefits), or
- (b) section 680 (foreign benefits).

## CHAPTER 3

### TAXABLE UK SOCIAL SECURITY BENEFITS

## 660 Taxable benefits: UK benefits – Table A

- (1) This is Table A—

TABLE A

### TAXABLE UK BENEFITS

| <i>Social security benefit</i> | <i>Payable under</i>         |  |
|--------------------------------|------------------------------|--|
| Bereavement allowance          | SSCBA 1992<br>SSCB(NI)A 1992 | Section 39B<br>Section 39B   |
| Carer's allowance              | SSCBA 1992<br>SSCB(NI)A 1992 | Section 70<br>Section 70   |
| Incapacity benefit             | SSCBA 1992<br>SSCB(NI)A 1992 | Section 30A(1) or (5), 40<br>or 41<br>Section 30A(1) or (5), 40<br>or 41 |
| Income support                 | SSCBA 1992<br>SSCB(NI)A 1992 | Section 124<br>Section 123   |
| Jobseeker's allowance          | JSA 1995<br>JS(NI)O 1995     | Section 1<br>Article 3   |
| Statutory adoption pay         | SSCBA 1992                   | Section 171ZL  |

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|                         |   |                        |
|-------------------------|---|------------------------|
|                         | Any provision made for Northern Ireland which corresponds to section 171ZL of SSCBA 1992                  |                        |
| Statutory maternity pay | SSCBA 1992  | Section 164            |
|                         | SSCB(NI)A 1992  | Section 160            |
| Statutory paternity pay | SSCBA 1992  | Section 171ZA or 171ZB |
|                         | Any provision made for Northern Ireland which corresponds to section 171ZA or section 171ZB of SSCBA 1992 |                        |
| Statutory sick pay      | SSCBA 1992  | Section 151            |
|                         | SSCB(NI)A 1992  | Section 147.           |

- (2) A benefit listed below is not “social security income” or a “taxable benefit” if it is charged to tax under another Part of this Act—
- statutory adoption pay;
  - statutory maternity pay;
  - statutory paternity pay;
  - statutory sick pay.

#### **661 Taxable social security income**

- (1) This section applies in relation to each of the following taxable benefits listed in Table A—
- bereavement allowance,
  - carer’s allowance,
  - incapacity benefit, and
  - income support.
- (2) The amount of taxable social security income for a taxable benefit for a tax year is the full amount of the benefit accruing in the tax year irrespective of when any amount is actually paid.

#### **662 Person liable for tax**

The person liable for any tax charged under this Part on a taxable benefit listed in Table A is the person receiving or entitled to the benefit.

### **CHAPTER 4**

#### TAXABLE UK SOCIAL SECURITY BENEFITS: EXEMPTIONS

##### *Incapacity benefit*

#### **663 Long-term incapacity benefit: previous entitlement to invalidity benefit**

- (1) No liability to income tax arises on long-term incapacity benefit if—



*Status: Point in time view as at 07/04/2005.*

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- (a) a person is entitled to the benefit for a day of incapacity for work which falls in a period of incapacity for work which is treated for the purposes of that benefit as having begun before 13th April 1995, and
- (b) the part of that period which is treated as having fallen before that date includes a day for which that person was entitled to invalidity benefit.

(2) In this section—

“invalidity benefit” means invalidity benefit under—

(a) Part 2 of SSCBA 1992, or

(b) Part 2 of SSCB(NI)A 1992;

“long-term incapacity benefit” means incapacity benefit payable under—

(a) section 30A(5), 40 or 41 of SSCBA 1992, or

(b) section 30A(5), 40 or 41 of SSCB(NI)A 1992.

#### **664 Short-term incapacity benefit not payable at the higher rate**

(1) No liability to income tax arises on short-term incapacity benefit unless it is payable at the higher rate.

(2) In this section—

(a) “short-term incapacity benefit” means incapacity benefit payable under—

(i) section 30A(1) of SSCBA 1992, or

(ii) section 30A(1) of SSCB(NI)A 1992;

(b) the reference to short-term incapacity benefit payable at the higher rate is to be construed in accordance with—

(i) section 30B of SSCBA 1992, or

(ii) section 30B of SSCB(NI)A 1992.

#### *Income support*

#### **665 Exempt unless payable to member of couple involved in trade dispute**

(1) No liability to income tax arises on income support unless—

(a) the income support is payable to one member of a married or unmarried couple (“the claimant”), and

(b) section 126 of SSCBA 1992 or section 125 of SSCB(NI)A 1992 (trade disputes) applies to the claimant but not to the other member of the couple.

(2) In this section “married couple” and “unmarried couple” have the same meaning as in section 137(1) of SSCBA 1992 or section 133(1) of SSCB(NI)A 1992.

#### **666 Child maintenance bonus**

No liability to income tax arises on a part of income support which is attributable to a child maintenance bonus (within the meaning of section 10 of CSA 1995 or Article 4 of CS(NI)O 1995).

*Status: Point in time view as at 07/04/2005.*

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### **667 Amounts in excess of taxable maximum**

- (1) If the amount of income support paid to a person (“the claimant”) for a week or a part of a week exceeds the claimant’s taxable maximum for that period, no liability to income tax arises on the excess.
- (2) The claimant’s taxable maximum for a period is determined under section 668.

### **668 Taxable maximum**

- (1) A claimant’s taxable maximum for a week is determined under this subsection if the applicable amount for the purpose of calculating the income support consists only of an amount in respect of the relevant couple.

The taxable maximum is equal to one half of the applicable amount.

- (2) A claimant’s taxable maximum for a week is determined under this subsection if the applicable amount includes amounts that are not in respect of the relevant couple.

The taxable maximum is equal to one half of the amount which is included in the applicable amount in respect of the relevant couple.

- (3) A claimant’s taxable maximum for a part of a week is determined as follows—

*Step 1*

Assume that the income support is paid to the claimant for the whole of, rather than part of, the week.

*Step 2*

Determine under subsection (1) or (2) what the claimant’s taxable maximum for that week would be on that assumption.

*Step 3*

Determine the claimant’s taxable maximum for the part of the week using this formula—

$$\frac{N}{7} \times \text{TMW}$$

where—

N is the number of days in the part of the week for which the claimant is actually paid the income support, and

TMW is the taxable maximum for the whole week determined under step 2.

### **669 Interpretation**

- (1) In section 668, except in relation to Northern Ireland—
  - “applicable amount” means the amount prescribed in relation to income support in regulations made under section 135 of SSCBA 1992;
  - “married couple” and “unmarried couple” have the same meaning as in section 137(1) of SSCBA 1992.

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- (2) In section 668, in relation to Northern Ireland—  
“applicable amount” means the amount prescribed in relation to income support in regulations made under section 131 of SSCB(NI)A 1992;  
“married couple” and “unmarried couple” have the same meaning as in section 133(1) of SSCB(NI)A 1992.
- (3) In section 668 “relevant couple”, in relation to a claimant, means the married or unmarried couple of which the claimant is a member.

#### *Jobseeker’s allowance*

### **670 Child maintenance bonus**

No liability to income tax arises on a part of a jobseeker’s allowance which is attributable to a child maintenance bonus (within the meaning of section 10 of CSA 1995 or Article 4 of CS(NI)O 1995).

### **671 Amounts in excess of taxable maximum**

- (1) If the amount of jobseeker’s allowance paid to a person (“the claimant”) for a week or a part of a week exceeds the claimant’s taxable maximum for that period, no liability to income tax arises on the excess.
- (2) The claimant’s taxable maximum for a period is determined under sections 672 to 674.

### **672 Taxable maximum: general**

- (1) A claimant’s taxable maximum for a week is determined—  
(a) under section 673, if the claimant is paid an income-based jobseeker’s allowance for that week, or  
(b) under section 674, if the claimant is paid a contribution-based jobseeker’s allowance for that week.
- (2) A claimant’s taxable maximum for a part of a week is determined as follows—

#### *Step 1*

Assume that the jobseeker’s allowance is paid to the claimant for the whole of, rather than part of, the week.

#### *Step 2*

Determine under section 673 or 674 what the claimant’s taxable maximum for that week would be on that assumption.

#### *Step 3*

Determine the claimant’s taxable maximum for the part of the week using this formula—

$$\frac{M}{7} \times \text{TMW}$$

where—

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N is the number of days in the part of the week for which the claimant is actually paid the jobseeker's allowance, and

TMW is the taxable maximum for the whole week determined under step 2.

### **673 Taxable maximum: income-based jobseeker's allowance**

- (1) A claimant's taxable maximum for a week is determined under this section if—
  - (a) the claimant is paid an income-based jobseeker's allowance for that week, or
  - (b) the claimant is assumed under section 672(2) to be paid an income-based jobseeker's allowance for that week.
- (2) If the claimant is not a member of a married or unmarried couple, the claimant's taxable maximum for the week is equal to the age-related amount which would be applicable to the claimant if a contribution-based jobseeker's allowance were payable to the claimant for that week.
- (3) If the claimant is a member of a married or unmarried couple, the claimant's taxable maximum for the week is equal to the portion of the applicable amount which is included in the jobseeker's allowance in respect of the couple for that week.
- (4) But if—
  - (a) the claimant is a member of a married or unmarried couple, and
  - (b) the other member of that couple is prevented by section 14 of JSA 1995 or Article 16 of JS(NI)O 1995 (trade disputes) from being entitled to a jobseeker's allowance,
 the claimant's taxable maximum for that week is equal to half the portion of the applicable amount which is included in the jobseeker's allowance in respect of the couple for that week.

### **674 Taxable maximum: contribution-based jobseeker's allowance**

- (1) A claimant's taxable maximum for a week is determined under this section if—
  - (a) the claimant is paid a contribution-based jobseeker's allowance for that week, or
  - (b) the claimant is assumed under section 672(2) to be paid a contribution-based jobseeker's allowance for that week.
- (2) If the claimant is not a member of a married or unmarried couple, the claimant's taxable maximum for the week is equal to the age-related amount which is applicable to the claimant for that week.
- (3) If the claimant is a member of a married or unmarried couple, the claimant's taxable maximum for the week is equal to the portion of the applicable amount which would be included in the jobseeker's allowance in respect of the couple if an income-based jobseeker's allowance were payable to the claimant for that week.

### **675 Interpretation**

- (1) In sections 671 to 674, except in relation to Northern Ireland—

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“age-related amount” and “applicable amount” mean the amounts determined as such in accordance with regulations made under section 4 of JSA 1995;

“contribution-based jobseeker’s allowance” and “income-based jobseeker’s allowance” have the same meaning as in section 1(4) of JSA 1995;

“married couple” and “unmarried couple” have the same meaning as in section 35(1) of JSA 1995.

(2) In sections 671 to 674, in relation to Northern Ireland—

“age-related amount” and “applicable amount” mean the amounts determined as such in accordance with regulations made under Article 6 of JS(NI)O 1995;

“contribution-based jobseeker’s allowance” and “income-based jobseeker’s allowance” have the same meaning as in Article 3(4) of JS(NI)O 1995;

“married couple” and “unmarried couple” have the same meaning as in Article 2(2) of JS(NI)O 1995.

#### *Increases in respect of children*

#### **676 Increases in respect of children**

No liability to income tax arises on a part of a taxable benefit listed in Table A which is attributable to an increase in respect of a child.

### **CHAPTER 5**

#### **UK SOCIAL SECURITY BENEFITS WHOLLY EXEMPT FROM INCOME TAX**

#### **677 UK social security benefits wholly exempt from tax: Table B**

(1) No liability to income tax arises on the United Kingdom social security benefits listed in Table B.

#### **TABLE B—PART 1**

#### **BENEFITS PAYABLE UNDER PRIMARY LEGISLATION**

| <i>Social security benefit</i> | <i>Payable under</i> |             |
|--------------------------------|----------------------|-------------|
| Attendance allowance           | SSCBA 1992           | Section 64  |
|                                | SSCB(NI)A 1992       | Section 64  |
| Back to work bonus             | JSA 1995             | Section 26  |
|                                | JS(NI)O 1995         | Article 28  |
| Bereavement payment            | SSCBA 1992           | Section 36  |
|                                | SSCB(NI)A 1992       | Section 36  |
| Child benefit                  | SSCBA 1992           | Section 141 |
|                                | SSCB(NI)A 1992       | Section 137 |
| Child’s special allowance      | SSCBA 1992           | Section 56  |

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|   |                              |                            |
|---|------------------------------|----------------------------|
|   | SSCB(NI)A 1992               | Section 56                 |
| Child tax credit  | TCA 2002                     | Part 1                     |
| Council tax benefit   | SSCBA 1992                   | Section 131                |
| Disability living allowance                                       | SSCBA 1992<br>SSCB(NI)A 1992 | Section 71<br>Section 71   |
| Guardian's allowance  | SSCBA 1992<br>SSCB(NI)A 1992 | Section 77<br>Section 77   |
| Housing benefit   | SSCBA 1992<br>SSCB(NI)A 1992 | Section 130<br>Section 129 |
| Industrial injuries benefit (apart from industrial death benefit) | SSCBA 1992<br>SSCB(NI)A 1992 | Section 94<br>Section 94   |
| Pensioner's Christmas bonus                                       | SSCBA 1992<br>SSCB(NI)A 1992 | Section 148<br>Section 144 |
| Payments out of the social fund                                   | SSCBA 1992<br>SSCB(NI)A 1992 | Section 138<br>Section 134 |
| Severe disablement allowance                                      | SSCBA 1992<br>SSCB(NI)A 1992 | Section 68<br>Section 68   |
| State maternity allowance   | SSCBA 1992<br>SSCB(NI)A 1992 | Section 35<br>Section 35   |
| State pension credit  | SPCA 2002<br>SPCA(NI) 2002   | Section 1<br>Section 1     |
| Working tax credit  | TCA 2002                     | Part 1                     |

## TABLE B — PART 2

### BENEFITS PAYABLE UNDER REGULATIONS

| <i>Social security benefit</i>                                   | <i>Payable under regulations made under</i> |                          |
|--|---|--------------------------|
| F238   | F238  | F238                     |
| ...  | ...   | ...                      |
| ...  | ...   | ...                      |
| Payments to reduce under-occupation by housing benefit claimants | WRPA 1999<br>WRP(NI)O 1999                  | Section 79<br>Article 70 |

- (2) Industrial death benefit is charged to tax under Part 9 (see section 577).
- (3) In this section “industrial death benefit” means any benefit payable under—
- (a) section 94 of, and Part 6 of Schedule 7 to, SSCBA 1992, or
  - (b) section 94 of, and Part 6 of Schedule 7 to, SSCB(NI)A 1992.

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#### Textual Amendments

**F238** Words in s. 677(1) Table B Pt. 2 repealed (22.7.2004) by [Finance Act 2004 \(c. 12\), Sch. 17 para. 9\(5\), Sch. 42 Pt. 2\(12\)](#)

## CHAPTER 6

### TAXABLE FOREIGN BENEFITS

#### 678 Taxable benefits: foreign benefits

- (1) This section applies to any benefit which is payable under the law of a country or territory outside the United Kingdom if—
  - (a) it is substantially similar in character to a benefit listed in Table A, and
  - (b) it is payable to a person resident in the United Kingdom.
- (2) But this section does not apply to a benefit which is charged to tax under Part 9 (pension income).

#### 679 Taxable social security income

- (1) If section 678 applies, the taxable social security income for a taxable benefit for a tax year is [<sup>F239</sup>the full amount of the social security income arising in the tax year, but subject to subsection (2).]
- [<sup>F240</sup>(2) That income is treated as relevant foreign income for the purposes of Chapters 2 and 3 of Part 8 of ITTOIA 2005 (relevant foreign income: remittance basis and deductions and reliefs).
- (3) See also Chapter 4 of that Part (unremittable income).]

#### Textual Amendments

**F239** Words in s. 679(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 613\(2\)](#) (with Sch. 2)

**F240** S. 679(2)(3) substituted for s. 679(2) (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 613\(3\)](#) (with Sch. 2)

#### 680 Person liable for tax

The person liable for any tax charged under this Part on a benefit to which section 678 applies is the person receiving or entitled to the benefit.

*Status: Point in time view as at 07/04/2005.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 23 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## CHAPTER 7

### TAXABLE AND OTHER FOREIGN BENEFITS: EXEMPTIONS

#### 681 Taxable and other foreign benefits: exemptions

- (1) No liability to income tax arises on a taxable foreign benefit if, or to the extent that, the corresponding UK benefit is exempt income.
- (2) No liability to income tax arises on a benefit which is payable under the law of a country or territory outside the United Kingdom if it is substantially similar in character to a United Kingdom social security benefit listed in Table B.
- (3) In this section—
  - “taxable foreign benefit” means a benefit to which section 678 applies;
  - “corresponding UK benefit”, in relation to a taxable foreign benefit, means the taxable benefit listed in Table A to which the foreign benefit is substantially similar in character (see section 678).

#### [<sup>F241</sup>681A] Foreign benefits of consular employees

- (1) No liability to income tax arises in respect of any benefit to which section 678 applies of a consular officer or employee in the United Kingdom for a foreign state if—
  - (a) Her Majesty by Order in Council directs that this section applies to the foreign state for the purpose of giving effect to a reciprocal arrangement with that state, and
  - (b) the officer or employee meets conditions A to C.
- (2) Condition A is that the officer or employee is not—
  - (a) a British citizen,
  - (b) a British overseas territories citizen,
  - (c) a British National (Overseas), or
  - (d) a British Overseas citizen.
- (3) Condition B is that the officer or employee is not engaged in any trade, profession, vocation or employment in the United Kingdom, otherwise than as a consular officer or employee of the state in question.
- (4) Condition C is that the officer or employee—
  - (a) is a permanent employee of that state, or
  - (b) was not ordinarily resident in the United Kingdom immediately before becoming a consular officer or employee in the United Kingdom of that state.
- (5) In this section—
  - “consular officer or employee” includes any person employed for the purposes of the official business of a consular officer at—
    - (a) any consulate,
    - (b) any consular establishment, or
    - (c) any other premises used for those purposes, and
  - “reciprocal agreement” has the same meaning as in section 302.



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- (6) Section 302(5) to (7) apply to an Order under subsection (1) and the operation of this section as they apply to an Order under section 302(1) and the operation of section 302.]

#### Textual Amendments

**F241** S. 681A inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 614](#) (with [Sch. 2](#))

## PART 11

### PAY AS YOU EARN

#### CHAPTER 1

##### INTRODUCTION

#### 682 Scope of this Part

- (1) This Part provides for the assessment, collection and recovery of income tax in respect of PAYE income.
- (2) The provisions of this Part are contained in—
  - this Chapter (which gives the meaning of “PAYE income”),
  - Chapter 2 (PAYE: general),
  - Chapter 3 (PAYE: special types of payer or payee),
  - Chapter 4 (PAYE: special types of income),
  - Chapter 5 (PAYE settlement agreements), and
  - Chapter 6 (miscellaneous and supplemental).
- (3) Provision for PAYE regulations is made by Chapters 2 to 6.

#### 683 PAYE income

- (1) For the purposes of this Act and any other enactment (whenever passed) “PAYE income” for a tax year consists of—
  - (a) any PAYE employment income for the year,
  - (b) any PAYE pension income for the year, and
  - (c) any PAYE social security income for the year.
- (2) “PAYE employment income” for a tax year means income which consists of—
  - (a) any taxable earnings from an employment in the year (determined in accordance with section 10(2)), and
  - (b) any taxable specific income from an employment for the year (determined in accordance with section 10(3)).

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- (3) “PAYE pension income” for a tax year means, subject to subsection (4), taxable pension income for the year determined in accordance with any of the following provisions—
- section 571 (United Kingdom pensions),
  - section 578 (United Kingdom social security pensions),
  - section 581 (approved retirement benefits schemes: pensions and annuities),
  - section 584 (approved retirement benefits schemes: unauthorised payments),
  - section 591 (former approved superannuation funds: annuities),
  - section 596 (approved personal pension schemes: annuities),
  - section 599 (approved personal pension schemes: income withdrawals),
  - section 602 (approved personal pension schemes: unauthorised payments),
  - section 616 (certain overseas government pensions paid in the United Kingdom),
  - section 621 (the House of Commons Members' Fund),
  - section 634 (voluntary annual payments).
- (4) “PAYE pension income” does not include any taxable pension income determined in accordance with section 584 that would not be such income if section 587 (marine pilots' benefit fund) were omitted.
- (5) “PAYE social security income” for a tax year means taxable social security income for the year determined in accordance with section 658(4) or (5) (taxable United Kingdom social security benefits).

**Modifications etc. (not altering text)**

**C13** S. 683 modified (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 36 para. 43\(3\)](#) (with s. 283(5), [Sch. 36](#))

**C14** S. 683(3) extended (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 36 para. 46](#) (with s. 283(5), [Sch. 36](#))

## CHAPTER 2

### PAYE: GENERAL

#### 684 PAYE regulations

- (1) The Board of Inland Revenue must make regulations (“PAYE regulations”) with respect to the assessment, charge, collection and recovery of income tax in respect of all PAYE income.
- (2) PAYE regulations may, in particular, include any such provision as is set out in the following list.

#### LIST OF PROVISIONS

##### 1. Provision—

- (a) for requiring persons making payments of, or on account of, PAYE income to make, at the time of the payment, deductions or repayments of income tax calculated by reference to tax tables prepared by the Board of Inland Revenue, and

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- (b) for making persons who are required to make any such deductions or repayments accountable to or, as the case may be, entitled to repayment from the Board.

[<sup>F242</sup>1A. Provision—

- (a) for deductions to be made, if and to the extent that the payee does not object, with a view to securing that income tax payable in respect of any income of a payee for a tax year which is not PAYE income is deducted from PAYE income of the payee paid during that year; and
- (b) as to the circumstances and manner in which a payee may object to the making of deductions.

2. Provision—

- (a) for repayments or deductions to be made, if and to the extent that the payee does not object, in respect of any amounts overpaid or remaining unpaid (or treated as overpaid or remaining unpaid) on account of—
  - (i) income tax in respect of income for a previous tax year, or
  - (ii) capital gains tax in respect of chargeable gains for such a year; and
- (b) as to the circumstances in which repayments or deductions may be made, and the circumstances and manner in which a payee may object to the making of repayments or deductions.]

3. Provision for the production to, and inspection by, persons authorised by the Board of wages sheets and other documents and records for the purposes of satisfying themselves that income tax has been and is being deducted, repaid and accounted for in accordance with the regulations.

4. Provision for requiring an employer or former employer to provide any information, within a prescribed time, about payments or other benefits provided or to be provided, including those provided or to be provided in connection with—

- (a) the termination of a person's employment, or
- (b) a change in the duties of or general earnings from a person's employment.

[<sup>F243</sup>4A. Provision authorising the recovery from the payee rather than the payer of any amount that the Inland Revenue considers should have been deducted by the payer.]

5. Provision for the way in which any matters provided for by the regulations are to be proved.

6. Provision—

- (a) for requiring the payment of interest on sums due to the Board which are not paid by the due date,
- (b) for determining the date (being not less than 14 days after the end of the tax year in respect of which the sums are due) from which such interest is to be calculated, and
- (c) for enabling the repayment or remission of such interest.

7. Provision for requiring the payment of interest on sums due from the Board and for determining the date from which such interest is to be calculated.

[<sup>F244</sup>7A. Provision for excluding payments of such description as may be specified from the operation of the regulations in such circumstances as may be specified. Provision for excluding payments of such description as may be specified from the operation of the regulations in such circumstances as may be specified.

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8. Provision for the making of decisions by the Board or the Inland Revenue as to any matter required to be decided for the purposes of the regulations and for appeals against such decisions.]
9. Provision for appeals with respect to matters arising under the regulations which would otherwise not be the subject of an appeal.
10. Different provision for different cases or classes of case.
11. Any incidental, consequential, supplementary and transitional provision which appears to the Board to be expedient.
- (3) The deductions of income tax required to be made by PAYE regulations under item 1 in the above list may be required to be made at the basic rate or other rates in such cases or classes of case as may be provided by the regulations.
- (4) Interest required to be paid by PAYE regulations under item 6 or 7 in the above list must be paid without any deduction of income tax and may not be taken into account in computing any income, profits or losses for any tax purposes.
- (5) PAYE regulations must not affect any right of appeal to the General or Special Commissioners which a person would have apart from the regulations.
- (6) It does not matter for the purposes of PAYE regulations that income is wholly or partly income for a tax year other than that in which the payment is made.
- (7) PAYE regulations have effect despite anything in the Income Tax Acts.
- (7A) [F<sup>245</sup>Nothing in PAYE regulations may be read—
- (a) as preventing the making of arrangements for the collection of tax in such manner as may be agreed by, or on behalf of, the payer and the Inland Revenue, or
  - (b) as requiring the payer to comply with the regulations in circumstances in which the Inland Revenue is satisfied that it is unnecessary or not appropriate for the payer to do so.
- (7B) References in this section and section 685 to income tax in respect of PAYE income are references to income tax in respect of that income if reasonable assumptions are (when necessary) made about other income.
- (7C) In this section and section 685—
- “payer” means any person paying PAYE income and “payee” means any person in receipt of such income;
- “specified” means specified in PAYE regulations.]
- (8) In this Act and any other enactment (whenever passed) “PAYE regulations” means regulations under this section.

#### Textual Amendments

**F242** S. 684(2) Items 1A and 2 substituted for s. 684(2) Item 2 (10.7.2003) by [Finance Act 2003 \(c. 14\), s. 145\(1\)\(a\)](#)

**F243** S. 684(2) Item 4A inserted (10.7.2003) by [Finance Act 2003 \(c. 14\), s. 145\(1\)\(b\)](#)

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- F244** S. 684(2) Items 7A and 8 substituted for s. 684(2) Item 8 (10.7.2003) by [Finance Act 2003 \(c. 14\), s. 145\(1\)\(c\)](#)
- F245** S. 684(7A)-(7C) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\), s. 145\(2\)](#)

## 685 Tax tables

- (1) The Board of Inland Revenue must construct tax tables with a view to securing that so far as possible—
- (a) the total income tax payable in respect of PAYE income for any tax year is deducted from PAYE income paid during that year, and
  - (b) the income tax deductible or repayable on the occasion of any payment of, or on account of, PAYE income is such that the following proportions are the same—
    - (i) the proportion which the total net income tax deducted since the beginning of the tax year bears to the total income tax payable for the year, and
    - (ii) the proportion which the part of the tax year which ends with the date of the payment bears to the whole year.
- (2) References in subsection (1) to the total income tax payable for the year are to be read as references to the total income tax estimated to be payable for the year in respect of the income in question—
- (a) subject to a provisional deduction for allowances and reliefs, and
  - <sup>[F246]</sup>(b) subject to an adjustment in respect of amounts required to be deducted or repaid by PAYE regulations made under item 1A or 2 in the list in section 684(2).]
- (3) For the purpose of estimating the total income tax payable as mentioned in subsection (1)(a), it may be assumed, in relation to any payment of, or on account of, PAYE income, that the following proportions will be the same—
- (a) the proportion which the income paid in the part of the tax year which ends with the making of the payment bears to the income for the whole year, and
  - (b) the proportion which that part of the tax year bears to the whole year.
- <sup>[F247]</sup>(4) PAYE regulations may make provision, where it appears to the Inland Revenue that it is impracticable for a payer to deduct tax by reference to tax tables—
- (a) for deductions to be made by the payer in accordance with other arrangements agreed as mentioned in section 684(7A)(a), or
  - (b) for the payee to be required to keep records and make payments and returns as if he were the payer.]

### Textual Amendments

- F246** S. 685(2)(b) substituted (10.7.2003) by [Finance Act 2003 \(c. 14\), s. 145\(3\)](#)
- F247** S. 685(4) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\), s. 145\(4\)](#)

## 686 Meaning of “payment”

- (1) For the purposes of PAYE regulations, a payment of, or on account of, PAYE income of a person is treated as made at the earliest of the following times—

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### *Rule 1*

The time when the payment is made.

### *Rule 2*

The time when the person becomes entitled to the payment.

### *Rule 3*

If the person is a director of a company and the income is income from employment with the company (whether or not as director), whichever is the earliest of—

- (a) the time when sums on account of the income are credited in the company's accounts or records (whether or not there is any restriction on the right to draw the sums);
- (b) if the amount of the income for a period is determined before the period ends, the time when the period ends;
- (c) if the amount of the income for a period is not determined until after the period has ended, the time when the amount is determined.

(2) Rule 3 applies if the person is a director of the company at any time in the tax year in which the time mentioned falls.

(3) In this section “director” means—

- (a) in relation to a company whose affairs are managed by a board of directors or similar body, a member of that board or body,
- (b) in relation to a company whose affairs are managed by a single director or other person, that director or person, and
- (c) in relation to a company whose affairs are managed by the members themselves, a member of the company,

and includes any person in accordance with whose directions or instructions the company's directors (as defined above) are accustomed to act.

(4) For the purposes of subsection (3) a person is not regarded as a person in accordance with whose directions or instructions the company's directors are accustomed to act merely because the directors act on advice given by that person in a professional capacity.

## CHAPTER 3

### PAYE: SPECIAL TYPES OF PAYER OR PAYEE

#### 687 Payments by intermediary

- (1) If any payment of, or on account of, PAYE income of an employee is made by an intermediary of the employer, the employer is to be treated, for the purposes of PAYE regulations, as making a payment of the income of an amount equal to the amount given by subsection (3).
- (2) Subsection (1) does not apply if the intermediary (whether or not a person to whom PAYE regulations apply) deducts income tax from the payment the intermediary makes, and accounts for it, in accordance with PAYE regulations.

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- (3) The amount referred to is—
  - (a) if the amount of the payment made by the intermediary is an amount to which the recipient is entitled after deduction of income tax, the aggregate of the amount of the payment and the amount of any income tax due, and
  - (b) in any other case, the amount of the payment.
- (4) For the purposes of this section a payment of, or on account of, PAYE income of an employee is made by an intermediary of the employer if it is made—
  - (a) by a person acting on behalf of the employer and at the expense of the employer or a person connected with the employer, or
  - (b) by trustees holding property for any persons who include or class of persons which includes the employee.

### **688 Agency workers**

- (1) If the remuneration receivable by an individual under or in consequence of any contract falls to be treated under section 44 (agency workers) as earnings from an employment, the relevant provisions have effect as if the individual held the employment with or under the agency.
- (2) If—
  - (a) the remuneration receivable by an individual under or in consequence of any contract falls to be so treated under section 44, and
  - (b) a payment of, or on account of, PAYE income of the individual is made by a person acting on behalf of the client, and at the expense of the client or a person connected with the client,section 687 and, in relation to any payment treated as made by the client under section 687, section 710 have effect in relation to the payment as if the client and not the agency were the employer for the purposes of the relevant provisions.
- (3) In subsections (1) and (2)—

“the agency” and “the client” have the same meanings as in section 44;  
“the relevant provisions” means this Chapter except section 691, Chapter 4 of this Part and section 710.

### **689 Employee of non-UK employer**

- (1) This section applies if—
  - (a) an employee during any period works for a person (“the relevant person”) who is not the employer of the employee,
  - (b) any payment of, or on account of, PAYE income of the employee in respect of that period is made by a person who is the employer or an intermediary of the employer or of the relevant person,
  - (c) PAYE regulations do not apply to the person making the payment or, if that person makes the payment as an intermediary of the employer or of the relevant person, the employer, and
  - (d) income tax is not deducted, or not accounted for, in accordance with the regulations by the person making the payment or, if that person makes the payment as an intermediary of the employer or of the relevant person, the employer.

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- (2) The relevant person is to be treated, for the purposes of PAYE regulations, as making a payment of PAYE income of the employee of an amount equal to the amount given by subsection (3).
- (3) The amount referred to is—
  - (a) if the amount of the payment actually made is an amount to which the recipient is entitled after deduction of income tax, the aggregate of the amount of the payment and the amount of any income tax due, and
  - (b) in any other case, the amount of the payment.
- (4) If, by virtue of any of sections 693 to 700, an employer would be treated for the purposes of PAYE regulations (if they applied to the employer) as making a payment of any amount to an employee, this section has effect as if—
  - (a) the employer were also to be treated for the purposes of this section as making an actual payment of that amount, and
  - (b) paragraph (a) of subsection (3) were omitted.
- (5) For the purposes of this section a payment of, or on account of, PAYE income of an employee is made by an intermediary of the employer or of the relevant person if it is made—
  - (a) by a person acting on behalf of the employer or the relevant person and at the expense of the employer or the relevant person or a person connected with the employer or the relevant person, or
  - (b) by trustees holding property for any persons who include or class of persons which includes the employee.
- (6) In this section and sections 690 and 691 “work”, in relation to an employee, means the performance of any duties of the employment of the employee and any reference to the employee’s working is to be read accordingly.

#### **690 Employee non-resident etc.**

- (1) This section applies in relation to an employee in a tax year only if the employee—
  - (a) is not resident or, if resident, not ordinarily resident in the United Kingdom, and
  - (b) works or will work in the United Kingdom and also works or is likely to work outside the United Kingdom.
- (2) If in relation to an employee to whom this section applies and any tax year it appears to the Inland Revenue that—
  - (a) some of the income paid to the employee by the employer is PAYE income, but
  - (b) some of that income may not be PAYE income,
 the Inland Revenue may, on an application made by the appropriate person, give a direction for determining a proportion of any payment made in that year of, or on account of, income of the employee which is to be treated as PAYE income.
- (3) In this section—
  - (a) “the appropriate person” means the person designated by the employer for the purposes of this section and, if no person is so designated, the employer, and
  - (b) any reference to a payment made by the employer includes a reference to a payment made by a person acting on behalf of the employer and at the expense of the employer or a person connected with the employer.



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- (4) An application under subsection (2) must provide such information as is available and is relevant to the application.
- (5) A direction under subsection (2)—
  - (a) must specify the employee to whom and the tax year to which it relates,
  - (b) must be given by notice to the appropriate person, and
  - (c) may be withdrawn by notice to the appropriate person from a date specified in the notice.
- (6) The date so specified may not be earlier than 30 days from the date on which the notice of withdrawal is given.
- (7) If—
  - (a) a direction under subsection (2) has effect in relation to an employee to whom this section applies, and
  - (b) a payment of, or on account of, the income of the employee is made by the employer in the tax year to which the direction relates,the proportion of the payment determined in accordance with the direction is to be treated for the purposes of PAYE regulations as a payment of PAYE income of the employee.
- (8) If in any tax year—
  - (a) no direction under subsection (2) has effect in relation to an employee to whom this section applies, and
  - (b) any payment of, or on account of, the income of the employee is made by the employer,the entire payment is to be treated for the purposes of PAYE regulations as a payment of PAYE income of the employee.
- (9) Subsections (7) and (8) are without prejudice to—
  - (a) any assessment in respect of the income of the employee in question, and
  - (b) any right to repayment of income tax overpaid and any obligation to pay income tax underpaid.
- (10) In a case where section 689 applies—
  - (a) the references to the employer in subsection (3)(a) are to be read as references to the relevant person, and
  - (b) any reference to a payment made by the employer is to be read as a reference to a payment treated, for the purposes of PAYE regulations, as made by the relevant person.

In this subsection “the relevant person” has the same meaning as in section 689.

## **691 Mobile UK workforce**

- (1) This section applies if it appears to the Board of Inland Revenue that—
  - (a) a person (“the relevant person”) has entered into or is likely to enter into an agreement that employees of another person (“the contractor”) are in any period to work for, but not as employees of, the relevant person,

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- (b) payments of, or on account of, PAYE income of the employees in respect of work done in that period are likely to be made by or on behalf of the contractor, and
  - (c) PAYE regulations would apply on the making of such payments but it is likely that income tax will not be deducted, or will not be accounted for, in accordance with the regulations.
- (2) The Board may give a direction that, if—
- (a) any of the employees of the contractor work in any period for, but not as employees of, the relevant person, and
  - (b) any payment is made by the relevant person in respect of work done by the employees in that period,
- income tax is to be deducted in accordance with the provisions of this section by the relevant person on making the payment.
- (3) A direction under subsection (2)—
- (a) must specify the relevant person and the contractor to whom it relates;
  - (b) must be given by notice to the relevant person; and
  - (c) may at any time be withdrawn by notice to the relevant person.
- (4) The Board must take such steps as are reasonably practicable to ensure that a contractor is supplied with a copy of any notice under subsection (3) which relates to him.
- (5) If—
- (a) a direction under subsection (2) has effect, and
  - (b) any employees of the contractor specified in the direction work for, but not as employees of, the relevant person so specified,
- income tax is, subject to and in accordance with PAYE regulations, to be deducted by the relevant person on making any payment in respect of that work as if so much of the payment as is attributable to work done by each employee were a payment of PAYE income of that employee.

## **692 Organised arrangements for sharing tips**

- (1) PAYE regulations may make provision with respect to organised arrangements for tips to be shared among employees by a person (“P”) who is not the principal employer.
- (2) PAYE regulations may include provisions which, for the purposes of PAYE regulations—
- (a) treat every payment made by P to an employee by way of the employee’s share of any tips (including the retention by P of P’s own share if P is an employee) as a payment of PAYE income by P, and
  - (b) treat P as the employer in relation to every such payment.
- (3) PAYE regulations may also include provisions which—
- (a) apply if P has failed to comply with any of the requirements of PAYE regulations, and
  - (b) treat the principal employer, for the purposes of PAYE regulations, as making payments to the employees of any tips paid over to P by the principal employer.
- (4) In this section—

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“the principal employer” means the person under whose general control and management the employees work;

“tips” means gratuities and service charges.

## CHAPTER 4

### PAYE: SPECIAL TYPES OF INCOME

#### *Income provided by means of vouchers and tokens*

#### **693 Cash vouchers**

- (1) If a cash voucher to which Chapter 4 of Part 3 (taxable benefits: vouchers and credit-tokens) applies is received by an employee at any time, the employer is to be treated, for the purposes of PAYE regulations, as making at that time a payment of PAYE income of the employee of an amount equal to the amount ascertained under section 81(2) (benefit of cash voucher treated as earnings).
- (2) This section does not apply to the provision of a cash voucher if—
  - (a) the voucher is used to meet expenses, and
  - (b) if the amount for which the voucher is capable of being exchanged had been paid directly to the employee by his or her employer, the amount would not have been PAYE income except by virtue of section 70 (sums in respect of expenses).
- (3) This section does not apply to the provision of a cash voucher if it is exchanged for an amount which—
  - (a) is used to meet expenses, and
  - (b) if it had been paid directly to the employee by the employer, would not have been PAYE income except by virtue of section 70.
- (4) PAYE regulations may exclude from the scope of this section the provision of cash vouchers in circumstances specified in the regulations.
- (5) A cash voucher provided for an employee and appropriated to the employee—
  - (a) by attaching it to a card held for the employee, or
  - (b) in any other way,is to be treated for the purposes of this section as having been received by the employee at the time when it is appropriated.

#### **694 Non-cash vouchers**

- (1) If a non-cash voucher to which this section applies is received by an employee, the employer is to be treated, for the purposes of PAYE regulations, as making a payment of PAYE income of the employee of an amount equal to the amount ascertained under section 87(2) (benefit of non-cash voucher treated as earnings).
- (2) This section applies to a non-cash voucher to which Chapter 4 of Part 3 (taxable benefits: vouchers and credit-tokens) applies if—
  - (a) either of the conditions set out below is met with respect to the voucher, and

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- (b) the voucher is not of a description for the time being excluded from the scope of this section by PAYE regulations.
- (3) The first condition is met with respect to a non-cash voucher if it is capable of being exchanged for anything which, if provided to the employee at the time when the voucher is received, would fall to be regarded as a readily convertible asset.
- (4) The second condition is met with respect to a non-cash voucher if (but for section 701(2)(b)) it would fall itself to be regarded as a readily convertible asset.
- (5) A payment under subsection (1) is made—
  - (a) in the case of a non-cash voucher other than a cheque voucher, at the time when the cost of provision is incurred or, if later, the time when the voucher is received by the employee;
  - (b) in the case of a cheque voucher, at the time when the voucher is handed over in exchange for money, goods or services.
- (6) For the purposes of subsection (5)—
  - “cheque voucher” has the same meaning as in Chapter 4 of Part 3;
  - “cost of provision”, in relation to a voucher provided by an employer, has the meaning given by section 87;
  - and a cheque voucher that is posted is to be treated as handed over at the time of posting.
- (7) A non-cash voucher provided for an employee and appropriated to the employee—
  - (a) by attaching it to a card held for the employee, or
  - (b) in any other way,
 is to be treated for the purposes of this section as having been received by the employee at the time when it is appropriated.

## 695 Credit-tokens

- (1) On each occasion on which an employee uses a credit-token provided to the employee because of the employee’s employment to obtain—
  - (a) money, or
  - (b) anything which, if provided to the employee at the time when the credit-token is used, would fall to be regarded as a readily convertible asset,
 the employer is to be treated, for the purposes of PAYE regulations, as making a payment of PAYE income of the employee of an amount equal to the amount ascertained under section 94(2) (benefit of credit-token treated as earnings).
- (2) The use of a credit-token by an employee to obtain money is excluded from the scope of this section if the money—
  - (a) is used to meet expenses, and
  - (b) if it had been paid directly to the employee by the employer, would not have been PAYE income except by virtue of section 70 (sums in respect of expenses).
- (3) PAYE regulations may make provision for excluding from the scope of this section any other description of use of a credit-token.

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### *Income provided in other ways*

#### **696 Readily convertible assets**

- (1) If any PAYE income of an employee is provided in the form of a readily convertible asset, the employer is to be treated, for the purposes of PAYE regulations, as making a payment of that income of an amount equal to the amount given by subsection (2).
- (2) The amount referred to is the amount which, on the basis of the best estimate that can reasonably be made, is the amount of income likely to be PAYE income in respect of the provision of the asset.

#### **697 Enhancing the value of an asset**

- (1) This section applies if—
  - (a) any PAYE income of an employee is provided in the form of anything enhancing the value of an asset in which the employee or a member of the employee's family or household already has an interest, and
  - (b) that asset, with its value enhanced, would be treated as a readily convertible asset if PAYE income were provided to the employee in the form of the asset at the time of the enhancement.
- (2) Section 696 has effect as if—
  - (a) the employee had been provided, at the time of the enhancement, with PAYE income in the form of the asset (with its value enhanced), instead of with what enhanced its value, and
  - (b) the reference in subsection (2) to the provision of the asset were a reference to the enhancement of its value.
- (3) Any reference in this section to enhancing the value of an asset is a reference to—
  - (a) the provision of any services by which the asset or any right or interest in it is improved or otherwise made more valuable,
  - (b) the provision of any property the addition of which to the asset improves it or otherwise increases its value, or
  - (c) the provision of any other enhancement by the application of money or property to the improvement of the asset or to securing an increase in its value or the value of any right or interest in it.
- (4) There is excluded from the scope of what constitutes enhancing the value of an asset for the purposes of this section any enhancement of value arising on the acquisition by the employee (whether or not as a result of the exercise of a right to acquire shares) of—
  - (a) any shares acquired by the employee under a scheme approved under Schedule 3 (approved SAYE option schemes) or 4 (approved CSOP schemes), or Schedule 9 to ICTA (approved profit sharing schemes),
  - (b) any right over or interest in shares obtained or acquired by the employee under such a scheme, or
  - (c) any shares acquired by the employee as a result of the exercise of a right over shares obtained before 27th November 1996,if the shares in question form part of the share capital of a company falling within section 701(3).

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- (5) PAYE regulations may make provision excluding such other matters as may be described in the regulations from the scope of what constitutes enhancing the value of an asset for the purposes of this section.

**[<sup>F248</sup>698 PAYE: special charges on employment-related securities**

- (1) This section applies where by reason of the operation of—
- (a) section 426 (chargeable events in relation to restricted securities and restricted interests in securities),
  - (b) section 438 (chargeable events in relation to convertible securities and interests in convertible securities),
  - (c) section 446B (charge on acquisition where market value of securities or interest artificially depressed),
  - (d) section 446L (charge where market value of securities artificially enhanced),
  - (e) section 446U (securities or interest acquired for less than market value: charge on discharge of notional loan),
  - (f) section 446Y (charge where securities or interest disposed of for more than market value), or
  - (g) section 447 (chargeable benefit from securities or interest),

in relation to employment-related securities, an amount counts as employment income of an employee.

- (2) Sections 684 to 691 and 696 have effect as if—
- (a) the employee were provided with PAYE income in the form of the employment-related securities by the employer on the relevant date, and
  - (b) the reference in subsection (2) of section 696 to the amount of income likely to be PAYE income in respect of the provision of the asset were to the amount likely to count as employment income.

**[<sup>F249</sup>(2A) For the purposes of this section the amount likely to count as employment income under section 426 or 438 means the amount after deducting the amount of any relief likely to be available under section 428A or 442A (relief for secondary Class 1 contributions met by employee).]**

- (3) In a case in which the employment-related securities are not readily convertible assets, if—
- (a) the amount counts as income by virtue of section 427(3)(c), 439(3)(b), (c) or (d), 446Y or 447, and
  - (b) the whole or any part of the consideration or benefit concerned takes the form of a payment or consists in the provision of an asset,
- subsection (4) applies.
- (4) Sections 684 to 691 and 696 have effect —
- (a) to the extent that the consideration or benefit takes the form of a payment, as if it were a payment of PAYE income of the employee by the employer, and
  - (b) to the extent that the consideration or benefit consists in the provision of an asset, as if the provision of the asset were the provision of PAYE income in the form of the asset by the employer on the relevant date.

- (5) Section 696 as applied by subsection (4)(b) has effect as if the reference in subsection (2) of that section to the amount of income likely to be PAYE income were

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to the same proportion of the amount likely to count as employment income as so much of the consideration or benefit as consists in the provision of the asset bears to the whole of the consideration or benefit.

- (6) In this section “the relevant date” means—
- (a) in relation to an amount counting as employment income under section 426 or 438, the date on which the chargeable event in question occurs,
  - (b) in relation to an amount counting as employment income under section 446B, the date of the acquisition of the securities or interest in securities in question,
  - (c) in relation to an amount counting as employment income under section 446L, the valuation date in question,
  - (d) in relation to an amount counting as employment income under section 446U, the date on which the notional loan in question is treated as discharged,
  - (e) in relation to an amount counting as employment income under section 446Y, the date of the disposal of the securities or interest in securities in question, and
  - (f) in relation to an amount counting as employment income under section 447, the date on which the benefit in question is received.
- (7) In this section “employment-related securities” has the same meaning as in Chapters 1 to 4 of Part 7.]

**Textual Amendments**

- F248** S. 698 substituted for ss. 698, 699 (1.9.2003 with effect in accordance with Sch. 22 para. 12(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 12\(1\)](#); S.I. 2003/1997, art. 2
- F249** S. 698(2A) inserted (1.9.2004) by [Finance Act 2004 \(c. 12\)](#), s. 85(2), [Sch. 16 para. 4\(2\)](#); S.I. 2004/1945, art. 2

**<sup>F248</sup>699 PAYE: conversion of shares**

.....

**Textual Amendments**

- F248** S. 698 substituted for ss. 698, 699 (1.9.2003 with effect in accordance with Sch. 22 para. 12(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 12\(1\)](#); S.I. 2003/1997, art. 2

**<sup>F250</sup>700 PAYE: gains from securities options**

- (1) This section applies where by reason of the operation of section 476 (acquisition of securities pursuant to securities option etc) in relation to an employment-related securities option an amount counts as employment income of an employee.
- (2) In a case where the amount counts as employment income by virtue of section 477(3)
- (a) (acquisition of securities), sections 684 to 691 and 696 have effect as if—
    - (a) the employee were provided with PAYE income in the form of the securities by the employer on the relevant date, and
    - (b) the reference in subsection (2) of section 696 to the amount of income likely to be PAYE income in respect of the provision of the asset were to the amount likely to count as employment income.

*Status: Point in time view as at 07/04/2005.*

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- (3) In a case where the amount counts as income by virtue of section 477(3)(b) or (c) (assignment or release for consideration or receipt of benefit), sections 684 to 691 and 696 have effect —
- (a) to the extent that the consideration or benefit takes the form of a payment, as if it were a payment of PAYE income of the employee by the employer, and
  - (b) to the extent that the consideration or benefit consists in the provision of an asset, as if the provision of the asset were the provision of PAYE income in the form of the asset by the employer on the relevant date.
- (4) Section 696 as applied by subsection (3)(b) has effect as if the reference in subsection (2) of that section to the amount of income likely to be PAYE income were to the same proportion of the amount likely to count as employment income as so much of the consideration or benefit as consists in the provision of the asset bears to the whole of the consideration or benefit.
- [<sup>F251</sup>(4A) For the purposes of this section the amount likely to count as employment income under section 476 means the amount after deducting the amount of any relief likely to be available under section 481 or 482 (relief for secondary Class 1 contributions or special contribution met by employee).]
- (5) In this section “the relevant date” means the date on which the chargeable event in question occurs.
- (6) In this section—
- “employment-related securities option”, and
  - “securities”,
- have the same meaning as in Chapter 5 of Part 7.]

#### Textual Amendments

**F250** S. 700 substituted (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 13\(1\)](#); [S.I. 2003/1997](#), [art. 2](#)

**F251** S. 700(4A) inserted (1.9.2004) by [Finance Act 2004 \(c. 12\)](#), [s. 85\(2\)](#), [Sch. 16 para. 4\(3\)](#); [S.I. 2004/1945](#), [art. 2](#)

### Supplemental

#### 701 Meaning of “asset”

- (1) In this Chapter “asset” includes any property and in particular any investment of a kind specified in Part 3 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544).

This is subject to subsection (2).

- (2) In this Chapter “asset” does not include—
- (a) any payment actually made of, or on account of, PAYE income;
  - (b) <sup>F252</sup>... any cash voucher, non-cash voucher or credit-token;
  - (c) the following—
    - (i) any shares acquired by the employee (whether or not as a result of the exercise of a right to acquire shares) under a scheme approved under



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- Schedule 3 (approved SAYE option schemes) <sup>F253</sup>..., or Schedule 9 to ICTA (approved profit sharing schemes),
- [<sup>F254</sup>(ia) any shares acquired by the employee [<sup>F255</sup>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;]]
- <sup>F256</sup>(ii) . . . . .
- (iii) any shares acquired by the employee as the result of the exercise of a right over shares obtained before 27th November 1996 [<sup>F257</sup>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],
- if the shares in question form part of the ordinary share capital of a company falling within subsection (3); or
- (d) any description of property for the time being excluded from the scope of this section by PAYE regulations.
- (3) A company falls within this subsection if it—
- (a) is the employer (“the employer company”);
- (b) has control of the employer company; or
- (c) either is, or has control of, a company which is a member of a consortium owning either the employer company or a company having control of the employer company.
- [<sup>F258</sup>(3A) Paragraph (c) of subsection (2) does not apply to shares after their acquisition as mentioned in that paragraph.]
- (4) In this section “share” includes stock.
- (5) For the purposes of this section a company is a member of a consortium owning another company if it is one of a number of companies which between them beneficially own not less than 75% of the other company’s ordinary share capital and each of which beneficially owns not less than 5% of that capital.

#### Textual Amendments

- F252** Words in s. 701(2)(b) repealed (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 14\(1\)](#), [Sch. 43 Pt. 3\(4\)](#); [S.I. 2003/1997](#), art. 2
- F253** Words in s. 701(2)(c)(i) repealed (with effect in accordance with Sch. 21 para. 18(5) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 18\(2\)](#), [Sch. 43 Pt. 3\(3\)](#)
- F254** S. 701(2)(c)(ia) inserted (with effect in accordance with Sch. 21 para. 18(5) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 18\(3\)](#)
- F255** Words in s. 701(2)(c)(ia) substituted (18.6.2004 with effect in accordance with s. 88(11)-(13) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [s. 88\(9\)\(a\)](#)
- F256** S. 701(2)(c)(ii) repealed (18.6.2004 with effect in accordance with s. 88(11)-(13) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [s. 88\(9\)\(b\)](#), [Sch. 42 Pt. 2\(11\)](#)
- F257** Words in s. 701(2)(c)(iii) inserted (18.6.2004 with effect in accordance with s. 88(11)-(13) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [s. 88\(9\)\(c\)](#)
- F258** S. 701(3A) inserted (18.6.2004 with effect in accordance with s. 88(11)-(13) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [s. 88\(10\)](#)

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## 702 Meaning of “readily convertible asset”

- (1) In this Chapter “readily convertible asset” means—
- (a) an asset capable of being sold or otherwise realised on—
    - (i) a recognised investment exchange (within the meaning of the Financial Services and Markets Act 2000 (c. 8)),
    - (ii) the London Bullion Market,
    - (iii) the New York Stock Exchange, or
    - (iv) a market for the time being specified in PAYE regulations;
  - (b) an asset consisting in—
    - (i) the rights of an assignee, or any other rights, in respect of a money debt that is or may become due to the employer or any other person,
    - (ii) property that is subject to a warehousing regime, or any right in respect of property so subject, or
    - (iii) anything that is likely (without anything being done by the employee) to give rise to, or to become, a right enabling a person to obtain an amount or total amount of money which is likely to be similar to the expense incurred in the provision of the asset; or
  - (c) an asset for which trading arrangements are in existence, or are likely to come into existence in accordance with—
    - (i) any arrangements of another description existing when the asset is provided, or
    - (ii) any understanding existing at that time.
- (2) For the purposes of this section trading arrangements for any asset provided to any person exist whenever there exist any arrangements the effect of which in relation to that asset is to enable—
- (a) that person, or
  - (b) a member of that person’s family or household,
- to obtain an amount or total amount of money that is, or is likely to be, similar to the expense incurred in the provision of that asset.
- (3) PAYE regulations may exclude any description of arrangements from being trading arrangements for the purposes of this section.
- (4) References in this section to enabling a person to obtain an amount of money are to be read—
- (a) as references to enabling an amount to be obtained by that person by any means at all, including in particular—
    - (i) by using any asset or other property as security for a loan or advance, or
    - (ii) by using any rights comprised in or attached to any asset or other property to obtain any asset for which trading arrangements exist; and
  - (b) as including references to cases where a person is enabled to obtain an amount as a member of a class or description of persons, as well as where the person is so enabled in the person’s own right.
- (5) For the purposes of this section an amount is similar to the expense incurred in the provision of any asset if it is, or is an amount of money equivalent to—
- (a) the amount of the expense so incurred, or
  - (b) a greater amount, or

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(c) an amount that is less than that amount but not substantially so.

[<sup>F259</sup>(5A) An asset consisting in securities which is not a readily convertible asset apart from this subsection is to be treated as a readily convertible asset unless the securities are shares that are corporation tax deductible.

(5B) For the purposes of subsection (5A) shares are corporation tax deductible if they are acquired by a person—

- (a) by reason of that, or another person's, employment with a company, or
- (b) pursuant to an option granted by reason of that, or another person's, employment with a company,

and the company is entitled to corporation tax relief in respect of the shares under Schedule 23 to the Finance Act 2003 (corporation tax relief for employee share acquisition).

(5C) If a person acquires additional shares by virtue of holding shares that are corporation tax deductible, the additional shares are to be treated for the purposes of subsection (5A) as if they were corporation tax deductible.

(5D) If—

- (a) on a person ceasing to be beneficially entitled to shares that are corporation tax deductible, that person acquires other shares, and
- (b) the circumstances are such that the shares to which the person ceases to be beneficially entitled constitute “original shares” and the other shares constitute a “new holding” for the purposes of sections 127 to 130 of TCGA 1992,

the shares that constitute the new holding are to be treated for the purposes of subsection (5A) as if they were corporation tax deductible.]

(6) In this section—

“money” includes money expressed in a currency other than sterling;

“money debt” means any obligation which falls to be, or may be, settled—

- (a) by the payment of money, or
- (b) by the transfer of a right to settlement under an obligation which is itself a money debt;

[<sup>F260</sup>“securities” has the same meaning as in Chapters 1 to 5 of Part 7 (employment income from securities) (see section 420),

“shares” includes—

- (a) an interest in shares, and
- (b) stock or an interest in stock,]

“warehousing regime” means—

- (a) a warehousing or fiscal warehousing regime (within the meaning of sections 18 to 18F of the Value Added Tax Act 1994 (c. 23)); or
- (b) any corresponding arrangements in a State other than the United Kingdom which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993.

#### Textual Amendments

**F259** S. 702(5A)-(5D) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 15\(2\)](#)

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**F260** Words in s. 702(6) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 15\(3\)](#)

**Modifications etc. (not altering text)**

**C15** S. 702 modified (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 15\(4\)](#)

## CHAPTER 5

### PAYE SETTLEMENT AGREEMENTS

#### 703 Introduction

This Chapter provides—

- (a) for employers to make agreements with the Inland Revenue (“PAYE settlement agreements”) under which they agree to be accountable to the Board for sums in respect of income tax on general earnings of their employees; and
- (b) for such earnings to be treated for certain purposes of the Income Tax Acts as excluded from the employees' income.

#### 704 Sums payable by employers under agreements

(1) PAYE regulations may provide—

- (a) for a person to make a PAYE settlement agreement with the Inland Revenue; and
- (b) to such extent as may be prescribed, for that person’s accountability, and the sums to be accounted for, in respect of income tax on general earnings of that person’s employees to be determined—
  - (i) in accordance with the agreement, and
  - (ii) not in accordance with PAYE regulations which would apply apart from this Chapter.

(2) Without prejudice to the generality of section 684(2), any power of the Board to make PAYE regulations with respect to sums falling to be accounted for under such regulations includes power to make the corresponding provision with respect to sums falling to be accounted for in accordance with a PAYE settlement agreement.

#### 705 Approximations allowed in calculations

PAYE regulations may provide for a PAYE settlement agreement to allow sums which an employer is to account for—

- (a) to be computed, if two or more persons hold employments to which the agreement relates, by reference to a number of those persons all taken together;
- (b) to include sums representing income tax on an estimated amount taken to be the aggregate of the amounts of PAYE income consisting of—
  - (i) taxable benefits provided or made available by reason of the employments to which the agreement relates, and
  - (ii) expenses paid to the persons holding those employments; and

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- (c) to be computed in a manner under which they do not necessarily represent an amount of income tax which would be payable (apart from the agreement) by persons holding employments to which the agreement relates.

## 706 Exclusion of general earnings from income etc.

PAYE regulations may provide—

- (a) that sums accountable for by an employer under a PAYE settlement agreement, or any other sums, are not to be treated for any prescribed purpose as tax deducted from general earnings;
- (b) that an employee is to have no right to be treated as having paid tax in respect of sums accountable for by the employer under such an agreement;
- (c) that an employee is to be treated, except—
  - (i) for the purposes of the obligations imposed on the employer by such an agreement, and
  - (ii) to such further extent as may be prescribed,as relieved from any prescribed obligations of the employee under the Income Tax Acts in respect of general earnings from an employment to which the agreement relates; and
- (d) that such earnings are to be treated as excluded from the employee's income for such further purposes of the Income Tax Acts, and to such extent, as may be prescribed.

## 707 Interpretation of this Chapter

In this Chapter—

“employment” means any employment the general earnings from which are (or, apart from any regulations made by virtue of [<sup>F261</sup>this Chapter], would be) PAYE income and related expressions are to be construed accordingly;

“prescribed” means prescribed by PAYE regulations;

“taxable benefit”, in relation to an employee, means any benefit provided or made available, otherwise than in the form of a payment of money, to the employee, or to a person who is a member of the employee's family or household.

### Textual Amendments

**F261** Words in s. 707 substituted (10.7.2003) by Finance Act 2003 (c. 14), s. 145(5)

## CHAPTER 6

### MISCELLANEOUS AND SUPPLEMENTAL

## 708 PAYE repayments

- (1) PAYE regulations may provide that no repayment of income tax may be made under such regulations to a person—
  - (a) during a period for which the person has claimed jobseeker's allowance, or

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- (b) at a time when the person is prevented by the trade disputes provisions from being entitled to a jobseeker's allowance, or would be so prevented if the person otherwise met the conditions for entitlement.
- (2) Different provision may be made with respect to—
  - (a) persons within subsection (1)(a), and
  - (b) persons within subsection (1)(b).
- (3) “The trade disputes provisions” means—
  - (a) section 14 of JSA 1995, or
  - (b) Article 16 of JS(NI)O 1995.

### **709 Additional provision for certain assessments**

- (1) This section applies if—
  - (a) an assessment to income tax is made as respects relevant income (with or without other income), and
  - (b) the assessment is made after the end of the period of 12 months following the tax year for which it is made.
- (2) In so far as it relates to relevant income, the assessment is to be made in accordance with the practice generally prevailing at the end of that period.
- (3) “Relevant income” means income which—
  - (a) has been taken into account in the making of deductions or repayments of tax under PAYE regulations, and
  - (b) was received not less than 12 months before the beginning of the tax year in which the assessment is made.

### **710 Notional payments: accounting for tax**

- (1) If an employer makes a notional payment of PAYE income of an employee, the employer must [<sup>F262</sup>, subject to and in accordance with PAYE regulations,] deduct income tax at the relevant time from any payment or payments the employer actually makes of, or on account of, PAYE income of the employee.
- (2) For the purposes of this section—
  - (a) a notional payment is a payment treated as made by virtue of any of sections 687, 689 and 693 to 700, other than a payment whose amount is given by section 687(3)(a) or 689(3)(a), and
  - (b) any reference to an employer includes a reference to a person who is treated as making a payment by virtue of section 689(2).
- (3) Subsection (4) applies if, because the payments actually made are insufficient for the purpose, the employer is unable to deduct the full amount of the income tax as required by subsection (1).
- (4) The employer must [<sup>F263</sup>, subject to and in accordance with PAYE regulations,] account to the Board of Inland Revenue at the relevant time for an amount of income tax equal to the amount of income tax the employer is required, but is unable, to deduct.
- (5) PAYE regulations may make provision—

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- (a) with respect to the time when any notional payment (or description of notional payment) is made;
  - (b) applying (with or without modifications) any specified provisions of the regulations for the time being in force in relation to deductions from actual payments to amounts [<sup>F264</sup>deducted or accounted for (or required to be deducted or accounted for)] in respect of any notional payments;
  - (c) with respect to the collection and recovery of amounts [<sup>F265</sup>deducted or accounted for (or required to be deducted or accounted for)] in respect of notional payments.
- (6) Any amount—
- (a) which an employer deducts as mentioned in subsection (1), or
  - (b) for which an employer accounts as mentioned in subsection (4),
- is to be treated as [<sup>F266</sup>an amount of tax which], at the time when the notional payment is made, [<sup>F266</sup>is deducted] in respect of the employee's liability to income tax.
- (7) “The relevant time” means—
- (a) in subsection (1), any occasion—
    - (i) on or after the time when the notional payment is made, and
    - (ii) falling within the same income tax period,on which the employer actually makes a payment of, or on account of, PAYE income of the employee;
  - (b) in subsection (4), any time within 14 days of the end of the income tax period in which the notional payment was made.
- (8) In subsection (7) “income tax period” has the same meaning as in the Income Tax (Employments) Regulations 1993 (S.I. 1993/744), or any subsequent regulations making corresponding provision.

#### Textual Amendments

**F262** Words in s. 710(1) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\), s. 145\(6\)\(a\)](#)

**F263** Words in s. 710(4) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\), s. 145\(6\)\(a\)](#)

**F264** Words in s. 710(5)(b) substituted (10.7.2003) by [Finance Act 2003 \(c. 14\), s. 145\(6\)\(b\)](#)

**F265** Words in s. 710(5)(c) substituted (10.7.2003) by [Finance Act 2003 \(c. 14\), s. 145\(6\)\(b\)](#)

**F266** Words in s. 710(6) substituted (10.7.2003) by [Finance Act 2003 \(c. 14\), s. 145\(6\)\(c\)](#)

## 711 Right to make a return

- (1) A person who has PAYE income for a tax year in respect of which deductions or repayments are made under PAYE regulations may by notice require the Inland Revenue to give that person a notice under section 8 of TMA 1970 (personal return) for the tax year.
- (2) A notice to the Inland Revenue under subsection (1) must be given no later than 5 years after the 31st October next following the tax year.

## 712 Interpretation of this Part

- (1) In this Part—

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“employee” means a person who holds or has held employment with another person;

“employer” means—

- (a) in relation to an employee, a person with whom the employee holds or has held an employment, and
- (b) in relation to any PAYE income of an employee, the person who is the employer of the employee in relation to the employment in respect of which the income is or was provided or, as the case may be, by reference to which it falls to be regarded as PAYE income. The above definitions are subject to sections 688 and 710(2)(b).

- (2) Sections 4 and 5 apply for the purposes of this Part as they apply for the purposes of the employment income Parts.

## PART 12

### PAYROLL GIVING

#### 713 Donations to charity: payroll deduction scheme

- (1) This section applies if—
  - (a) an individual is entitled to receive payments of, or on account of, PAYE income in respect of which PAYE regulations require deductions or repayments of income tax in accordance with those regulations, and
  - (b) at the request of the individual, the person making the payments (the “payer”) withholds sums from them as donations.
- (2) In determining whether there is such a requirement under PAYE regulations for the purposes of subsection (1)(a), any requirement under the regulations which requires the deduction of an amount in calculating the payments of, or on account of, PAYE income is to be disregarded.
- (3) The amount of the donations is allowed as a deduction in calculating the amount of the individual’s income which is charged to tax in accordance with subsection (4).
- (4) In the case of a payment of, or on account of—
  - (a) taxable earnings from an employment, the deduction is allowed from the taxable earnings from the employment in calculating the net taxable earnings from the employment for the relevant tax year for the purposes of Part 2 (see section 11(1));
  - (b) taxable specific income from an employment, the deduction is allowed from that taxable specific income in calculating the net taxable specific income from the employment for the relevant tax year for the purposes of Part 2 (see section 12(1));
  - (c) taxable pension income for a pension, annuity or other item of pension income, the deduction is allowed from that taxable pension income in calculating the net taxable pension income for that income for the relevant tax year for the purposes of Part 9 (see section 567(3));
  - (d) taxable social security income for a taxable benefit, the deduction is allowed from that taxable social security income in calculating the net taxable social



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security income for that benefit for the relevant tax year for the purposes of Part 10 (see section 658(3)).

- (5) For the purposes of subsection (4) “relevant tax year” means—
- (a) in the case of paragraphs (a) and (b), the tax year in which the donation is withheld, and
  - (b) in the case of paragraphs (c) and (d), the tax year for which the income referred to in subsection (1)(a) is taxable pension income or taxable social security income, as the case may be.

#### **714 Meaning of “donations”**

- (1) For the purposes of this Part “donations” means sums which—
- (a) are withheld by the payer under a scheme which is an approved scheme at the time of the withholding,
  - (b) constitute gifts by the individual to one or more specified charities under the scheme, and
  - (c) satisfy the conditions (if any) set out in the scheme.

- (2) In this section—

“approved scheme” means a scheme which is approved (or is of a kind approved) by the Inland Revenue and under which—

- (a) the payer is required to pay sums withheld to a body which is an approved agent at the time of the withholding, and
- (b) the approved agent is required—
  - (i) to pay sums withheld to the specified charity or charities, or
  - (ii) in a case where the agent is itself a specified charity, to retain any sum due to itself;

“charity” means any body of persons or trust established for charitable purposes only and includes each of the bodies mentioned in section 507 of ICTA;

“specified charity” means a charity specified by the individual.

- (3) For the purposes of this section a body is an “approved agent” if it is approved by the Inland Revenue for the purpose of paying donations to one or more charities.

#### **715 Approval of schemes: regulation by Treasury**

- (1) The Treasury may by regulations prescribe the circumstances in which the Inland Revenue may grant or withdraw approval of any—
- (a) scheme,
  - (b) kind of scheme, or
  - (c) agent.
- (2) The circumstances, whether relating to the terms of schemes or the qualifications of agents or otherwise, are to be such as the Treasury think fit.
- (3) The Treasury may by regulations make provision—
- (a) requiring a payer or agent who participates (or has at any time participated) in an approved scheme under this Part—

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- (i) to comply, within a prescribed period, with any notice which the Inland Revenue give to the payer or agent to make available for their inspection documents or records of a prescribed kind,
- (ii) in prescribed circumstances, to furnish to the Inland Revenue prescribed information;
- (b) for, and in relation to, appeals to the Special Commissioners against the Inland Revenue’s refusal to approve, or their withdrawal of approval from, any—
  - (i) scheme,
  - (ii) kind of scheme, or
  - (iii) agent;
- (c) generally for giving effect to sections 713 and 714.

In this subsection “prescribed” means prescribed by the regulations.

## PART 13

### SUPPLEMENTARY PROVISIONS

#### *Alteration of amounts*

#### **716 Alteration of amounts by Treasury order**

- (1) The Treasury may by order increase or further increase the sums of money specified in any of the following provisions.
- (2) They are—
  - (a) section 179(2)(a) (limit on exception for advances for necessary expenses),
  - (b) section 241(3)(a) and (b) (incidental overnight expenses: overall exemption limit),
  - (c) section 264(2) and (3) (annual parties and functions),
  - (d) section 287(1) (limit on exemption under Chapter 7 of Part 4: removal benefits and expenses),
  - (e) section 322(1) and (4) (suggestion awards: “the permitted maximum”),
  - (f) section 323(2) (long service awards),
  - (g) section 324(6) (small gifts from third parties), and
  - (h) section 358(3)(b) (business entertainment and gifts: other exceptions).
- (3) An order relating to section 241(3)(a) or (b) may make provision for determining what earnings are treated as received on or after the date when the order comes into force.
- (4) An order relating to section 287(1) applies to a change of an employee’s residence where the employment change occurs on or after the day specified in the order for the purpose.

“The employment change” here has the same meaning as in Chapter 7 of Part 4 (see section 275).

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*[<sup>F267</sup>Priority rule for certain dividends etc*

**Textual Amendments**

**F267** S. 716A and cross-heading inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005](#) (c. 5), s. 883(1), [Sch. 1 para. 615](#) (with [Sch. 2](#))

**716A Priority rule for dividends etc. of UK resident companies etc.**

Any income, so far as it falls within—

- (a) Part 2, 9 or 10 of this Act, and
- (b) Chapter 3 of Part 4 of ITTOIA 2005 (dividends etc. from UK resident companies etc.),

is dealt with under Chapter 3 of Part 4 of ITTOIA 2005.]

*Orders and regulations*

**717 Orders and regulations made by Treasury or Board**

- (1) Any power of the Treasury or the Board of Inland Revenue to make any order or regulations under this Act is exercisable by statutory instrument.

This is subject to subsection (2).

- (2) Subsection (1) does not apply to the power conferred by section 28(5) (overseas Crown employment: order excepting certain earnings).

- (3) Any statutory instrument containing any order or regulations made by the Treasury or the Board of Inland Revenue under this Act is subject to annulment in pursuance of a resolution of the House of Commons.

This is subject to subsection (4).

- (4) Subsection (3) does not apply to any statutory instrument made under section 343(3) (deduction for professional membership fees: order adding certain fees).

*Interpretation*

**718 Connected persons**

Section 839 of ICTA (how to tell whether persons are connected) applies for the purposes of this Act.

**719 Control in relation to a body corporate**

Section 840 of ICTA (meaning of control in relation to a body corporate) applies for the purposes of this Act, unless otherwise indicated.

**720 Meaning of “the Inland Revenue” etc.**

- (1) In this Act “the Inland Revenue” means any officer of the Board of Inland Revenue.

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- (2) In this Act “the Board of Inland Revenue” means the Commissioners of Inland Revenue (as to which, see in particular the Inland Revenue Regulation Act 1890 (c. 21)).
- (3) Functions conferred on the Board of Inland Revenue by this Act are within section 4A of that Act (functions of Board exercisable by officer acting with their authority).

## 721 Other definitions

- (1) In this Act—

“cash voucher” has the same meaning as in Chapter 4 of Part 3 (see section 75),

[<sup>F268</sup>“the Contributions and Benefits Act ” means SSCBA 1992 or SSCB(NI)A 1992;]

“credit-token” has the same meaning as in Chapter 4 of Part 3 (see section 92),

“foreign employer” means—

- (a) in the case of an employee resident in the United Kingdom, an individual, partnership or body of persons resident outside the United Kingdom and not resident in the United Kingdom or the Republic of Ireland, and
- (b) in the case of an employee not resident in the United Kingdom, an individual, partnership or body of persons resident outside and not resident in the United Kingdom,

“non-cash voucher” has the same meaning as in Chapter 4 of Part 3 (see section 84),

“the normal self-assessment filing date”, in relation to a tax year, means the 31st January following the tax year,

“personal representatives”, in relation to a person who has died, means—

- (a) in the United Kingdom, persons responsible for administering the estate of the deceased, and
- (b) in a country or territory outside the United Kingdom, those persons having functions under its law equivalent to those of administering the estate of the deceased,

“tax year” means, in relation to income tax, a year for which any Act provides for income tax to be charged, and

“the tax year 2003-04” means the tax year beginning on 6th April 2003 (and any corresponding expression in which two years are similarly mentioned is to be read in the same way).

- (2) In the application of this Act to Scotland, “assignment” means an assignation.
- (3) Any reference in this Act to being domiciled in the United Kingdom is to be read as a reference to being domiciled in any part of the United Kingdom.
- (4) For the purposes of this Act the following are members of a person’s family—
  - (a) the person’s spouse,
  - (b) the person’s children and their spouses,
  - (c) the person’s parents, and
  - (d) the person’s dependants.

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- (5) For the purposes of this Act the following are members of a person’s family or household—
- (a) members of the person’s family,
  - (b) the person’s domestic staff, and
  - (c) the person’s guests.
- (6) The following provisions (which relate to the legal equality of illegitimate children) are to be disregarded in interpreting references in this Act to a child or children—
- (a) section 1 of the Family Law Reform Act 1987 (c. 42);
  - (b) the paragraph inserted in Schedule 1 to the Interpretation Act 1978 (c. 30) by paragraph 73 of Schedule 2 to the 1987 Act;
  - (c) section 1(2) of the Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9);
  - (d) Article 155 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)).
- (7) In the employment income Parts any reference to earnings which is not limited by the context—
- (a) to earnings within Chapter 1 of Part 3, or
  - (b) to any other particular description of earnings,
- includes a reference to any amount treated as earnings by any of the provisions mentioned in section 7(5) (meaning of “employment income” etc.).

#### **Textual Amendments**

**F268** Words in s. 721(1) inserted (1.9.2004) by [Finance Act 2004 \(c. 12\)](#), s. 85(2), [Sch. 16 para. 7\(2\)](#); [S.I. 2004/1945](#), art. 2

*Amendments, repeals, citation etc.*

#### **722 Consequential amendments**

Schedule 6 contains consequential amendments.

#### **723 Commencement and transitional provisions and savings**

- (1) This Act comes into force on 6th April 2003 and has effect—
- (a) for the purposes of income tax, for the tax year 2003-04 and subsequent tax years, and
  - (b) for the purposes of corporation tax, for accounting periods ending after 5th April 2003.
- (2) Subsection (1) is subject to Schedule 7, which contains transitional provisions and savings.

#### **724 Repeals and revocations**

- (1) The enactments specified in Part 1 of Schedule 8 (which include certain spent provisions) are repealed to the extent specified.
- (2) The instruments specified in Part 2 of that Schedule are revoked to the extent specified.

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## **725 Citation**

This Act may be cited as the Income Tax (Earnings and Pensions) Act 2003.

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## SCHEDULES

### SCHEDULE 1

Section 2

#### ABBREVIATIONS AND DEFINED EXPRESSIONS

#### PART 1

#### ABBREVIATIONS OF ACTS AND INSTRUMENTS

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|                |   |
|----------------|---|
| TMA 1970       | The Taxes Management Act 1970 (c. 9)  |
| ICTA 1970      | The Income and Corporation Taxes Act 1970 (c. 10)                                 |
| FA 1970        | The Finance Act 1970 (c. 24)  |
| FA 1971        | The Finance Act 1971 (c. 68)  |
| OPA 1973       | The Overseas Pensions Act 1973 (c. 21)  |
| FA 1973        | The Finance Act 1973 (c. 51)  |
| FA 1974        | The Finance Act 1974 (c. 30)  |
| FA 1976        | The Finance Act 1976 (c. 40)  |
| FA 1977        | The Finance Act 1977 (c. 36)  |
| ICTA           | The Income and Corporation Taxes Act 1988 (c. 1)                                  |
| FA 1988        | The Finance Act 1988 (c. 39)  |
| FA 1989        | The Finance Act 1989 (c. 26)  |
| SSCBA 1992     | The Social Security Contributions and Benefits Act 1992 (c. 4)                    |
| SSCB(NI)A 1992 | The Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) |
| TCGA 1992      | The Taxation of Chargeable Gains Act 1992 (c. 12)                                 |
| VERA 1994      | The Vehicle Excise and Registration Act 1994 (c. 22)                              |
| FA 1995        | The Finance Act 1995 (c. 4)   |
| JSA 1995       | The Jobseekers Act 1995 (c. 18)   |
| CSA 1995       | The Child Support Act 1995 (c. 34)  |
| CS(NI)O 1995   | The Child Support (Northern Ireland) Order 1995 (S.I. 1995/2702 (N.I. 13))        |

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|                               |  |
|-------------------------------|--|
| JS(NI)O 1995                  | The Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15))                  |
| FA 1996                       | The Finance Act 1996 (c. 8)  |
| ERA 1996                      | The Employment Rights Act 1996 (c. 18)   |
| ER(NI)O 1996                  | The Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16))           |
| FA 1999                       | The Finance Act 1999 (c. 16)   |
| WRPA 1999                     | The Welfare Reform and Pensions Act 1999 (c. 30)   |
| WRP(NI)O 1999                 | The Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) |
| FA 2000                       | The Finance Act 2000 (c. 17)   |
| CAA 2001                      | The Capital Allowances Act 2001 (c. 2)   |
| FA 2001                       | The Finance Act 2001 (c. 9)  |
| SPCA 2002                     | The State Pension Credit Act 2002 (c. 16)  |
| TCA 2002                      | The Tax Credits Act 2002 (c. 21)   |
| SPCA(NI) 2002                 | The State Pension Credit Act (Northern Ireland) 2002 (c. 14 (N.I.))                      |
| [ <sup>F269</sup> ITTOIA 2005 | The Income Tax (Trading and Other Income) Act 2005]                                      |

#### Textual Amendments

**F269** Words in Sch. 1 Pt. 1 inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 616\(2\)](#) (with Sch. 2)

## PART 2

### INDEX OF EXPRESSIONS DEFINED IN THIS ACT OR ICTA

*Note: this index does not apply to expressions used in any of Chapters 6 to 9 of Part 7 (share incentive plans and other arrangements for acquiring shares): separate indexes appear at the end of Schedules 2 to 5.*

|                                    |                |
|------------------------------------|----------------|
| accessory (in Chapter 6 of Part 3) | section 125(2) |
| F270                               | F270           |
| ...                                | ...            |
| F270                               | F270           |
| ...                                | ...            |
| F270                               | F270           |



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|   |   |
|---|---|
| ...   | ...   |
| [ <sup>F271</sup> the acquisition (in Chapters 1 to 4 of Part 7)              | section 421B(8) (see also section 446Q(4))] |
| F270  | F270  |
| ...   | ...   |
| [ <sup>F271</sup> the acquisition (in Chapter 5 of Part 7)                    | section 471(5)]                             |
| administrator (in Chapter 2 of Part 6)  | section 400(1)                              |
| age of a car<br>F272  | section 171(3)                              |
| ... (in Chapter 6 of Part 3)  |   |
| agency contract (in Chapter 7 of Part 2)                                      | section 47(1)                               |
| annual rental value (in Chapter 10 of Part 3)                                 | section 207                                 |
| annual value (in Chapter 5 of Part 3)   | section 110                                 |
| approved (in Chapter 8 of Part 9)   | section 604                                 |
| approved (in relation to retirement benefits scheme) (in Chapter 6 of Part 9) | section 586(1)                              |
| approved retirement benefits scheme (in Chapter 6 of Part 9)                  | section 587(1)                              |
| F270  | F270  |
| ...   | ...   |
| F270  | F270  |
| ...   | ...   |
| F270  | F270  |
| ...   | ...   |
| asset (in Chapter 4 of Part 11)   | section 701                                 |
| F270  | F270  |
| ...   | ...   |
| assignment (in the application of the Act to Scotland)                        | section 721(2)                              |
| associate (in Chapter 8 of Part 2)  | section 60                                  |
| associate (in Chapter 11 of Part 7)   | section 549(4)                              |

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|   |                        |
|---|------------------------|
| associated company (in Chapter 8 of Part 2)   | section 61(1)          |
| [ <sup>F271</sup> associated company (in section 421H(1) and Chapters 2 to 4 of Part 7) | section 421H(2)]       |
| F270  | F270                   |
| ...   | ...                    |
| [ <sup>F271</sup> associated person (in Chapters 1 to 4 of Part 7)                      | section 421C]          |
| [ <sup>F271</sup> associated person (in Chapter 5 of Part 7)                            | section 472]           |
| available for private use (in Chapter 6 of Part 3)                                      | section 118(1)         |
| basic rate  | section 832(1) of ICTA |
| benefit (in Chapter 10 of Part 3)   | section 201(2)         |
| benefit (in Chapter 3 of Part 6)  | section 402            |
| the benefits code (in the employment income Parts)                                      | section 63(1)          |
| the Board of Inland Revenue   | section 720(2)         |
| body of persons   | section 832(1) of ICTA |
| business (in Chapter 8 of Part 2)   | section 61(1)          |
| business travel (in Chapter 6 of Part 3)  | section 171(1)         |
| business travel (in Chapter 2 of Part 4)  | section 236(1)         |
| capital allowance   | section 832(1) of ICTA |
| car (in Chapter 6 of Part 3)  | section 115(1)         |
| car (in Chapter 2 of Part 4)  | section 235(2)         |
| car (in Chapter 3 of Part 4)  | section 249            |
| car is available to an employee (in Chapter 6 of Part 3)                                | section 116(1)         |
| car first made available to an employee (in Chapter 6 of Part 3)                        | section 116(2)(a)      |
| car made available by reason of employment (in Chapter 6 of Part 3)                     | section 117            |

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|  |  |
|--|--|
| car with a CO <sub>2</sub> emissions figure (in Chapter 6 of Part 3)   | section 134(1)                                 |
| car without a CO <sub>2</sub> emissions figure (in Chapter 6 of Part 3)  | section 134(2)                                 |
| cash voucher   | section 721(1)                                 |
| [ <sup>F271</sup> chargeable event (in Chapter 3B of Part 7)   | section 446P(5)]                               |
| charging provisions of Chapter 4 of Part 2 (in the employment income Parts)  | section 14(3)                                  |
| charging provisions of Chapter 5 of Part 2 (in the employment income Parts)  | section 20(3)                                  |
| cheque voucher (in Chapter 4 of Part 3)  | section 84(4)                                  |
| child, children  | section 832(5) of ICTA, and see section 721(6) |
| close company  | section 832(1) of ICTA                         |
| company  | section 832(1) of ICTA                         |
| company (in Chapter 8 of Part 2)   | section 61(1)                                  |
| <sup>F270</sup>  | <sup>F270</sup>                                |
| ...  | ...  |
| company vehicle (in Chapter 2 of Part 4)   | section 236(2)                                 |
| connected (in the context of “connected person” or one person being “connected” with another)                              | section 839 of ICTA (see section 718)          |
| [ <sup>F271</sup> consideration (in Chapters 2 to 5 of Part 7)   | sections 421(2) and 421A]                      |
| [ <sup>F271</sup> consideration given for the acquisition of employment-related securities (in Chapters 2 to 3A of Part 7) | section 421I]                                  |
| <sup>F270</sup>  | <sup>F270</sup>                                |
| ...  | ...  |
| [ <sup>F273</sup> the Contributions and Benefits Act   | section 721(1)]                                |
| control  | section 840 of ICTA (see section 719)          |

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|  |                        |
|--|------------------------|
| control (in the benefits code)   | section 69             |
| F270   | F270                   |
| ...  | ...                    |
| [ <sup>F271</sup> convertible securities (in Chapters 2 to 3A of Part 7)   | section 436]           |
| cost of provision in relation to non-cash voucher (in Chapter 4 of Part 3) | section 87(3)          |
| credit-token   | section 721(1)         |
| cycle (in Chapter 2 of Part 4)   | section 235(5)         |
| date of first registration (in relation to a car                           | section 171(2)         |
| F272   |                        |
| ...) (in Chapter 6 of Part 3)  |                        |
| deductible payment (in Part 8)   | section 558            |
| the deductibility provisions (in Part 5)                                   | section 332            |
| F270   | F270                   |
| ...  | ...                    |
| diesel (in Chapter 6 of Part 3)  | section 171(1)         |
| director (in the benefits code)  | section 67(1)          |
| director (in Chapter 1 of Part 6)  | section 386(5)         |
| F270   | F270                   |
| ...  | ...                    |
| F270   | F270                   |
| ...  | ...                    |
| F270   | F270                   |
| ...  | ...                    |
| F270   | F270                   |
| ...  | ...                    |
| director (in Chapter 10 of Part 7)   | section 548(1)         |
| director, full-time working (in the benefits code)                         | section 67(3)          |
| disabled person's badge (in Chapter 6 of Part 3)                           | section 171(4)         |
| distribution   | section 832(1) of ICTA |
| domiciled in the United Kingdom  | section 721(3)         |

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|  |  |
|--|--|
| donations (in Part 12)                                   | section 714(1)                             |
| earnings (in the employment income Parts)                | section 62 and see section 721(7)          |
| earnings (from which deductions are allowed) (in Part 5) | section 327(2)(a)                          |
| earnings charged on receipt (in Part 5)                  | section 335(4)                             |
| earnings charged on remittance (in Part 5)               | section 335(4)                             |
| earnings “for” a tax year (in Chapter 4 of Part 2)       | section 16                                 |
| earnings “for” a tax year (in Chapter 5 of Part 2)       | section 29                                 |
| earnings-only exemption                                  | section 227(2)                             |
| EC certificate of conformity (in Chapter 6 of Part 3)    | section 171(1)                             |
| EC type-approval certificate (in Chapter 6 of Part 3)    | section 171(1)                             |
| eligible period (in Chapter 6 of Part 5)                 | section 378(2)                             |
| employed (in the employment income Parts)                | sections 4 and 5(2)(a)                     |
| employed (in the benefits code)                          | section 66(1)(b)                           |
| employee (in the employment income Parts)                | sections 4 and 5(2)(b)                     |
| employee (in the benefits code)                          | section 66(1)(b) (see also section 216(5)) |
| employee (in Chapter 3 of Part 3)                        | section 70(4)                              |
| F270   | F270                                       |
| ...  | ...  |
| F270   | F270                                       |
| ...  | ...  |
| employee (in Chapter 10 of Part 3)                       | section 201(5)                             |
| employee (in Chapter 1 of Part 6)                        | section 386(5)                             |
| employee (in Chapter 2 of Part 6)                        | section 400(1)                             |

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|  |                  |
|--|------------------|
| [ <sup>F271</sup> the employee (in Chapters 1 to 4 of Part 7)        | section 421B(8)] |
| F270   | F270             |
| ...  | ...              |
| F270   | F270             |
| ...  | ...              |
| F270   | F270             |
| ...  | ...              |
| F270   | F270             |
| ...  | ...              |
| F270   | F270             |
| ...  | ...              |
| F270   | F270             |
| ...  | ...              |
| F270   | F270             |
| ...  | ...              |
| [ <sup>F271</sup> the employee (in Chapter 5 of Part 7)              | section 471(5)]  |
| employee (in Chapter 10 of Part 7)                                   | section 548(1)   |
| employee (in Chapter 11 of Part 7)                                   | section 549(5)   |
| employee (in Part 8)   | section 562(2)   |
| employee (in Chapter 6 of Part 9)                                    | section 588(1)   |
| employee (in Chapter 13 of Part 9)                                   | section 628(1)   |
| employee (in Part 11)  | section 712(1)   |
| employee benefit trust (in Chapter 11 of Part 7)                     | section 550      |
| [ <sup>F271</sup> employee-controlled (in Chapters 2 to 4 of Part 7) | section 421H(1)] |
| F270   | F270             |
| ...  | ...              |
| F270   | F270             |
| ...  | ...              |
| the employee offer (in Chapter 10 of Part 7)                         | section 544(1)   |

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|  |                        |
|--|------------------------|
| employer (in the employment income Parts)                            | sections 4 and 5(2)(c) |
| employer (in the benefits code)                                      | section 66(1)(b)       |
| the employer (in the benefits code)                                  | section 66(2)(b)       |
| employer (in Chapter 1 of Part 6)                                    | section 386(5)         |
| [ <sup>F271</sup> the employer (in Chapters 1 to 4 of Part 7)        | section 421B(8)]       |
| [ <sup>F271</sup> the employer (in Chapter 5 of Part 7)              | section 471(5)]        |
| employer (in Part 8)   | section 562(2)         |
| employer (in Part 11)  | section 712(1)         |
| F270   | F270                   |
| ...  | ...                    |
| F270   | F270                   |
| ...  | ...                    |
| F270   | F270                   |
| ...  | ...                    |
| employer's national insurance contributions (in Chapter 8 of Part 2) | section 61(1)          |
| employment (in the employment income Parts)                          | sections 4 and 5(1)    |
| employment (in the benefits code)                                    | section 66(1)(a)       |
| the employment (in the benefits code)                                | section 66(2)(a)       |
| employment (in Chapter 1 of Part 6)                                  | section 386(5)         |
| [ <sup>F271</sup> the employment (in Chapters 1 to 4 of Part 7)      | section 421B(8)]       |
| [ <sup>F271</sup> the employment (in Chapter 5 of Part 7)            | section 471(5)]        |
| employment (in Part 8)   | section 562(2)         |
| employment (in Chapter 5 of Part 11)                                 | section 707            |
| employment as a seafarer (in Chapter 6 of Part 5)                    | section 384(1)         |

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|  |   |
|--|---|
| the employment change (in Chapter 7 of Part 4)                                   | section 275                               |
| employment income  | section 7(2)                              |
| the employment income Parts  | section 3(2)                              |
| employment income exemption  | section 227(3)                            |
| employment-related benefit (in Chapter 10 of Part 3)                             | section 201(2)                            |
| employment-related loan (in Chapter 7 of Part 3)                                 | section 174                               |
| [ <sup>F271</sup> employment-related securities (in Chapters 1 to 5 of Part 7)]  | section 421B(8) (see also section 484(4)) |
| [ <sup>F271</sup> employment-related securities option (in Chapter 5 of Part 7)] | section 471(5)]                           |
| F270   | F270                                      |
| ...  | ...                                       |
| F270   | F270                                      |
| ...  | ...                                       |
| engagement to which Chapter 8 of Part 2 applies (in Chapter 8 of Part 2)         | section 49(5)                             |
| excluded benefits (in Chapter 10 of Part 3)                                      | section 202                               |
| excluded employment (in the benefits code)                                       | section 63(4)                             |
| excluded employment (in Part 4)  | section 239(9)                            |
| excluded services (in Chapter 7 of Part 2)                                       | section 47(2)                             |
| exempt approved scheme (in Chapter 13 of Part 9)                                 | section 628(1)                            |
| exempt income (for the purposes of the employment income Parts)                  | section 8                                 |
| exempt income (for the purposes of Part 9)                                       | section 566(3)                            |
| exempt income (for the purposes of Part 10)                                      | section 656(2)                            |
| ex-spouse (in Chapter 2 of Part 6)   | section 400(1)                            |



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|  |                         |
|--|-------------------------|
| ex-spouse (in Chapter 6 of Part 9)   | section 588(1)          |
| foreign employer   | section 721(1)          |
| former approved superannuation fund (in Chapter 7 of Part 9)                                     | section 594(1)          |
| former employee (in Part 8)  | section 562(1)          |
| former employer (in relation to former employee) (in Part 8)                                     | section 563             |
| former employment (in relation to former employee) (in Part 8)                                   | section 563             |
| General Commissioners  | section 2 of TMA 1970   |
| general earnings   | section 7(3)            |
| [ <sup>F274</sup> generally accepted accounting practice   | Section 832(1) of ICTA] |
| F270   | F270                    |
| ...  | ...                     |
| House of Commons Members' Fund (in Chapter 12 of Part 9)   | section 620             |
| the included amount (in Chapter 5 of Part 5)   | section 369(2)          |
| income withdrawal (in Chapter 8 of Part 9)   | section 604             |
| individual learning account training (in Chapter 4 of Part 4)                                    | section 256             |
| initial extra accessory (in Chapter 6 of Part 3)   | section 126(2)          |
| the Inland Revenue   | section 720(1)          |
| interest   | section 832(1) of ICTA  |
| [ <sup>F271</sup> interest, in relation to securities (or shares) (in Chapters 1 to 5 of Part 7) | section 420(8)]         |
| interest in residence (in Chapter 7 of Part 4)   | section 276(3)          |
| F270   | F270                    |
| ...  | ...                     |
| F270   | F270                    |
| ...  | ...                     |

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|   |                      |
|---|----------------------|
| F270  | F270                 |
| ...   | ...                  |
| last day on which car available (in Chapter 6 of Part 3)      | section 116(2)(b)    |
| later accessory (in Chapter 6 of Part 3)                      | section 126(3)       |
| the limitation day (in Chapter 7 of Part 4)                   | section 274          |
| list price (of a car) (in Chapter 6 of Part 3)                | section 123(1)       |
| list price (of accessories) (in Chapter 6 of Part 3)          | section 127          |
| listed provision (in Chapter 11 of Part 7)                    | section 549(2)       |
| loan (in Chapter 7 of Part 3)                                 | section 173(2)(a)    |
| local authority   | section 842A of ICTA |
| lower-paid employment (in Chapter 11 of Part 3)               | section 217          |
| making a loan (in Chapter 7 of Part 3)                        | section 173(2)(b)    |
| F270  | F270                 |
| ...   | ...                  |
| F270  | F270                 |
| ...   | ...                  |
| [ <sup>F271</sup> market value (in Chapters 1 to 5 of Part 7) | section 421(1)]      |
| F270  | F270                 |
| ...   | ...                  |
| market value (of asset) (in Chapter 10 of Part 3)             | section 208          |
| material interest (in company) (in the benefits code)         | section 68           |
| members of a person's family                                  | section 721(4)       |
| member of a person's family or household                      | section 721(5)       |
| mileage allowance payments (in Chapter 2 of Part 4)           | section 229(2)       |
| motor cycle (in Chapter 2 of Part 4)                          | section 235(4)       |

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|   |                        |
|---|------------------------|
| national insurance contributions (in Chapter 8 of Part 2)             | section 61(1)          |
| net taxable earnings (for the purposes of Part 2)                     | section 11             |
| net taxable specific income (for the purposes of Part 2)              | section 12             |
| non-approved retirement benefits scheme (in Chapter 1 of Part 6)      | section 387(2)         |
| non-approved retirement benefits scheme (in Chapter 2 of Part 6)      | section 400(1)         |
| non-cash voucher  | section 721(1)         |
| [ <sup>F271</sup> non-commercial increase (in Chapter 3B of Part 7)]  | section 446K(4)]       |
| [ <sup>F271</sup> non-commercial reduction (in Chapter 3B of Part 7)] | section 446K(4)]       |
| non-standard accessory (in Chapter 6 of Part 3)                       | section 125(4)         |
| the normal self-assessment filing date                                | section 721(1)         |
| notice  | section 832(1) of ICTA |
| [ <sup>F271</sup> the notional loan (in Chapter 3C of Part 7)]        | section 446S(1)]       |
| notional price (of a car) (in Chapter 6 of Part 3)                    | section 124(1)         |
| notional price (of accessories) (in Chapter 6 of Part 3)              | section 130(1)         |
| office (in the employment income Parts)                               | section 5(3)           |
| office (in Part 8)  | section 564(3)         |
| official rate of interest (in Chapter 7 of Part 3)                    | section 181            |
| [ <sup>F275</sup> offshore installation                               | section 837C of ICTA]  |
| <sup>F270</sup>   | <sup>F270</sup>        |
| ...   | ...                    |
| ordinary commuting (in Chapter 3 of Part 4)                           | section 249            |
| ordinary share capital  | section 832(1) of ICTA |

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|   |                   |
|---|-------------------|
| original pensioner (in Chapter 14 of Part 9)                                    | section 630(1)    |
| passenger payments (in Chapter 2 of Part 4)                                     | section 233(3)    |
| PAYE income   | section 683       |
| PAYE provisions (in Chapter 8 of Part 2)  | section 61(1)     |
| PAYE regulations  | section 684(8)    |
| F270  | F270              |
| ...   | ...               |
| pension (in Chapter 3 of Part 9)  | section 570       |
| pension (in Chapter 4 of Part 9)  | section 574       |
| pension (in Chapter 11 of Part 9)   | section 615(7)    |
| pension (in Chapter 18 of Part 9)   | section 647(4)    |
| pension income  | section 566(2)    |
| permanent workplace (in Chapter 3 of Part 4)                                    | section 249       |
| permanent workplace (in Part 5)   | section 339(2)    |
| person involved in providing the accommodation (in Chapter 5 of Part 3)         | section 112       |
| person paying an amount (in Chapter 2 of Part 5)                                | section 333(2)    |
| personal pension arrangements (in Chapter 8 of Part 9)                          | section 604       |
| personal pension scheme (in Chapter 8 of Part 9)                                | section 604       |
| personal representatives  | section 721(1)    |
| persons providing a benefit (in Chapter 10 of Part 3)                           | section 209       |
| post-employment earnings (in relation to former employee) (in Part 8)           | section 563       |
| premium (in relation to qualifying insurance contract) (in Chapter 2 of Part 5) | section 346(3)(a) |

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|   |                   |
|---|-------------------|
| premium (in relation to qualifying insurance contract) (in Part 8)  | section 558(3)(a) |
| pre-1973 pension (in Chapter 14 of Part 9)  | section 630(2)    |
| prescribed (in Chapter 5 of Part 11)  | section 707       |
| price of a car (in Chapter 6 of Part 3)   | section 122       |
| private use (in Chapter 6 of Part 3)  | section 118(2)    |
| the property, in relation to living accommodation (in Chapter 5 of Part 3)  | section 113       |
| provision of benefits in respect of an employee (in Chapter 1 of Part 6)  | section 386(6)    |
| provision of cash voucher for employee (in Chapter 4 of Part 3)   | section 74        |
| provision of credit-token for employee (in Chapter 4 of Part 3)   | section 91(a)     |
| provision of non-cash voucher for employee (in Chapter 4 of Part 3)   | section 83        |
| provision of relevant benefits (in Chapter 2 of Part 6)   | section 400(2)    |
| the public offer (in Chapter 10 of Part 7)  | section 544(1)    |
| published price of the manufacturer, importer or distributor of the accessory (in Chapter 6 of Part 3)                      | section 129(1)    |
| published price of the manufacturer, importer or distributor of the car (in relation to accessory) (in Chapter 6 of Part 3) | section 128(1)    |
| qualifying accessory (in Chapter 6 of Part 3)   | section 125(1)    |
| qualifying journey (in Chapter 3 of Part 4)   | section 249       |

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|  |                      |
|--|----------------------|
| readily convertible asset (in Chapter 4 of Part 11)                      | section 702          |
| receipt of cash voucher by employee (in Chapter 4 of Part 3)             | section 74           |
| receipt of money earnings (in Chapter 4 of Part 2)                       | section 18           |
| receipt of money earnings (in Chapter 5 of Part 2)                       | section 31           |
| receipt of non-cash voucher by employee (in Chapter 4 of Part 3)         | section 83           |
| receipt of non-money earnings (in Chapter 4 of Part 2)                   | section 19           |
| receipt of non-money earnings (in Chapter 5 of Part 2)                   | section 32           |
| [ <sup>F271</sup> recognised stock exchange                              | section 841 of ICTA] |
| registrant discount (in Chapter 10 of Part 7)                            | section 547          |
| relative (in Chapter 2 of Part 6)  | section 400(1)       |
| F270   | F270                 |
| ...  | ...                  |
| relevant benefits (in Chapter 1 of Part 6)                               | section 386(5)       |
| relevant benefits (in Chapter 2 of Part 6)                               | section 400(1)       |
| relevant engagements (in Chapter 8 of Part 2)                            | section 50(4)        |
| [ <sup>F271</sup> relevant period (in Chapter 3B of Part 7)              | section 446O]        |
| relevant retirement benefit (in relation to former employee) (in Part 8) | section 563          |
| relevant statutory scheme (in Chapter 13 of Part 9)                      | section 628(1)       |
| relevant taxes (in Chapter 6 of Part 3)                                  | section 171(1)       |
| remittance of earnings (in Chapter 5 of Part 2)                          | section 33           |

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|   |                        |
|---|------------------------|
| remuneration (in Chapter 7 of Part 2)   | section 47(3)          |
| residence, former residence and new residence (in Chapter 7 of Part 4)  | section 276(1), (2)    |
| [ <sup>F271</sup> restricted securities and restricted interest in securities (in Chapters 2, 3A and 3B of Part 7)] | sections 423 and 424]  |
| [ <sup>F271</sup> restriction (in Chapters 2, 3A and 3B of Part 7)]   | section 432(8)]        |
| retirement annuity contract (in Chapter 9 of Part 9)  | section 606            |
| retirement benefits scheme (in Chapter 1 of Part 6)   | section 387(1)         |
| retirement benefits scheme (in Chapter 6 of Part 9)   | section 586(1)         |
| road fuel gas (in Chapter 6 of Part 3)  | section 171(1)         |
| Schedule A business   | section 832(1) of ICTA |
| F270  | F270                   |
| ...   | ...                    |
| [ <sup>F271</sup> secondary Class 1 contributions (in Chapter 5 of Part 7)]   | section 484(7)]        |
| [ <sup>F271</sup> securities (in Chapters 1 to 5 of Part 7)]  | section 420]           |
| [ <sup>F271</sup> securities option (in Chapters 1 to 5 of Part 7)]   | section 420(8)]        |
| F270  | F270                   |
| ...   | ...                    |
| F270  | F270                   |
| ...   | ...                    |
| [ <sup>F271</sup> shares (in Chapters 1 to 5 of Part 7)]  | section 420(8)]        |
| F270  | F270                   |
| ...   | ...                    |
| F270  | F270                   |
| ...   | ...                    |
| F270  | F270                   |
| ...   | ...                    |

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| F270   | F270                   |
| ...  | ...                    |
| F270   | F270                   |
| ...  | ...                    |
| F270   | F270                   |
| ...  | ...                    |
| F270   | F270                   |
| ...  | ...                    |
| F270   | F270                   |
| ...  | ...                    |
| F270   | F270                   |
| ...  | ...                    |
| shares (in Chapter 10 of Part 7)                       | section 548(1)         |
| ship (in Chapter 6 of Part 5)                          | section 385            |
| social security income                                 | section 657(2)         |
| Special Commissioners                                  | section 4 of TMA 1970  |
| specific employment income                             | section 7(4)           |
| standard accessory (in Chapter 6 of Part 3)            | section 125(4)         |
| 51% subsidiary   | section 838(1) of ICTA |
| Table A (in Part 10)                                   | section 657(5)         |
| Table B (in Part 10)                                   | section 657(6)         |
| tax  | section 832(3) of ICTA |
| tax credit   | section 832(1) of ICTA |
| taxable benefit (in Chapter 5 of Part 11)              | section 707            |
| taxable benefits (in Part 10)                          | section 657(3)         |
| taxable cheap loan (in Chapter 7 of Part 3)            | section 175(2)         |
| taxable earnings (in the employment income Parts)      | section 10(2)          |
| taxable employment under Part 2 (in the benefits code) | section 66(3)          |
| taxable pension income (in Part 9)                     | section 567(3), (4)    |
| the taxable period (in Chapter 5 of Part 3)            | section 102(2)         |



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|   |  |
|---|--|
| taxable person (in Chapter 3 of Part 6)                             | section 403(6)   |
| taxable social security income (in Part 10)                         | section 658(4)-(7)   |
| taxable specific income (in the employment income Parts)            | section 10(3)  |
| tax year  | section 721(1)   |
| the tax year (in Part 5)  | section 327(2)(b)  |
| the tax year 2003-04 etc.   | section 721(1)   |
| F270  | F270   |
| ...   | ...  |
| F270  | F270   |
| ...   | ...  |
| total income  | section 835 of ICTA  |
| trade   | section 832(1) of ICTA   |
| transport voucher (in Chapter 4 of Part 3)                          | section 84(3)  |
| United Kingdom  | section 830 of ICTA  |
| UK approval certificate (in Chapter 6 of Part 3)                    | section 171(1)   |
| [ <sup>F276</sup> UK property business                              | section 832(1) of ICTA and Chapter 2 of Part 3 of ITTOIA 2005] |
| use of credit-token by employee (in Chapter 4 of Part 3)            | section 91(b)  |
| [ <sup>F271</sup> valuation date (in Chapter 3B of Part 7)          | section 446O]  |
| F270  | F270   |
| ...   | ...  |
| van (in Chapter 6 of Part 3)  | section 115(1)   |
| van (in Chapter 2 of Part 4)  | section 235(3)   |
| van is available to an employee (in Chapter 6 of Part 3)            | section 116(1)   |
| van made available by reason of employment (in Chapter 6 of Part 3) | section 117  |

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|  |                 |
|--|-----------------|
| [ <sup>F271</sup> variation, in relation to a restriction (in Chapter 2 of Part 7) | section 427(4)] |
| workplace (in Chapter 3 of Part 4)   | section 249     |
| workplace (in Part 5)  | section 339(1)  |
| work-related training (in Chapter 4 of Part 4)                                     | section 251(1)  |

### Textual Amendments

- F270** Sch. 1 Pt. 2 entries repealed (1.9.2003 with effect in accordance with Sch. 22 para. 42(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 42\(2\)](#), [Sch. 43 Pt. 3\(4\)](#); S.I. 2003/1997, art. 2
- F271** Words in Sch. 1 Pt. 2 inserted (1.9.2003 with effect in accordance with Sch. 22 para. 42(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 42\(3\)](#); S.I. 2003/1997, art. 2
- F272** Words in Sch. 1 Pt. 2 repealed (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(9\)](#)
- F273** Words in Sch. 1 Pt. 2 substituted (1.9.2004) by [Finance Act 2004 \(c. 12\)](#), s. 85(2), [Sch. 16 para. 7\(3\)](#); S.I. 2004/1945, art. 2
- F274** Words in Sch. 1 Pt. 2 inserted (with effect in accordance with Sch. 2 para. 2(8) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 2 para. 2\(7\)](#)
- F275** Words in Sch. 1 Pt. 2 inserted (with effect in accordance with Sch. 27 para. 16 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 27 para. 15](#)
- F276** Words in Sch. 1 Pt. 2 inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 616\(3\)](#) (with Sch. 2)

### Textual Amendments

- F270** Sch. 1 Pt. 2 entries repealed (1.9.2003 with effect in accordance with Sch. 22 para. 42(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 42\(2\)](#), [Sch. 43 Pt. 3\(4\)](#); S.I. 2003/1997, art. 2
- F271** Words in Sch. 1 Pt. 2 inserted (1.9.2003 with effect in accordance with Sch. 22 para. 42(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 42\(3\)](#); S.I. 2003/1997, art. 2
- F272** Words in Sch. 1 Pt. 2 repealed (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(9\)](#)
- F273** Words in Sch. 1 Pt. 2 substituted (1.9.2004) by [Finance Act 2004 \(c. 12\)](#), s. 85(2), [Sch. 16 para. 7\(3\)](#); S.I. 2004/1945, art. 2
- F274** Words in Sch. 1 Pt. 2 inserted (with effect in accordance with Sch. 2 para. 2(8) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 2 para. 2\(7\)](#)
- F275** Words in Sch. 1 Pt. 2 inserted (with effect in accordance with Sch. 27 para. 16 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 27 para. 15](#)
- F276** Words in Sch. 1 Pt. 2 inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 616\(3\)](#) (with Sch. 2)

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## SCHEDULE 2

Section 488

### APPROVED SHARE INCENTIVE PLANS

#### PART 1

##### INTRODUCTION

###### *Approval of share incentive plans (SIPs)*

- 1 (1) This Schedule makes provision for—
  - (a) the approval of share incentive plans (“SIPs”) by the Inland Revenue, and
  - (b) the administration and operation of such plans.
- (2) Parts 2 to 9 of this Schedule contain requirements that have to be met in order for plans to be approved under this Schedule.
- (3) The requirements consist of general requirements (see Part 2) and requirements as to—
  - the eligibility of individuals (see Part 3),
  - the types of shares that may be awarded (see Part 4),
  - free shares (see Part 5),
  - partnership shares (see Part 6),
  - matching shares (see Part 7),
  - cash dividends and dividend shares (see Part 8), and
  - the trustees (see Part 9).
- (4) Part 10 of this Schedule deals with the approval of plans and the withdrawal of approval.

###### *SIPs: free shares and partnership shares*

- 2 (1) In the SIP code a “share incentive plan” (or “SIP” for short) means (in accordance with section 488(4)) a plan established by a company providing—
  - (a) for shares to be appropriated to employees without payment (“free shares”), or
  - (b) for shares to be acquired on behalf of employees out of sums deducted from their salary (“partnership shares”).
- (2) In the SIP code, in relation to a SIP—
  - “the company” means the company which established the plan;
  - “plan requirements” means requirements applying to the plan;
  - “the trustees” means the body of persons established under Part 9 to exercise functions in connection with the plan.

###### *Matching shares*

- 3 (1) A SIP that provides for partnership shares may also provide for shares to be appropriated without payment to employees in proportion to the partnership shares acquired by them (“matching shares”).

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- (2) If a SIP contains provision for all, or more than one, of the following—  
     free shares,  
     partnership shares, and  
     matching shares,

the plan may provide for the company to decide when the provisions relating to each kind of share are to have effect.

*Group plans*

- 4 (1) A SIP established by a company that controls other companies (a “parent company”) may extend to all or any of those other companies.
- (2) In the SIP code a SIP established by a parent company which so extends is referred to as a “group plan”.
- (3) In relation to a group plan a “constituent company” means—  
     (a) the parent company, or  
     (b) any other company to which for the time being the plan is expressed to extend.
- (4) Paragraph 91 deals with jointly owned companies and companies controlled by them.

*Meaning of “award of shares”, “participant” etc.*

- 5 (1) For the purposes of the SIP code an “award of shares” is made under a SIP on each occasion when in accordance with the plan—  
     (a) free or matching shares are appropriated to employees, or  
     (b) partnership shares are acquired on behalf of employees.
- (2) Accordingly, references to shares awarded to an individual under a SIP are to—  
     (a) free or matching shares appropriated to the individual, or  
     (b) partnership shares acquired on the individual’s behalf,  
 under the plan.
- (3) For the purposes of the SIP code an individual participates in an award of free, matching or partnership shares under a SIP if shares included in that award are—  
     (a) in the case of an award of free or matching shares, appropriated to the individual, or  
     (b) in the case of an award of partnership shares, acquired on the individual’s behalf.
- (4) In the SIP code, in relation to a SIP, “participant” means an individual to whom shares have been awarded under the plan.

*Status: Point in time view as at 07/04/2005.*

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## PART 2

### GENERAL REQUIREMENTS

#### *General requirements for approval: introduction*

- 6 A SIP must meet the plan requirements contained in—
- paragraph 7 (the purpose of the plan),
  - paragraph 8 (all-employee nature of plan),
  - paragraph 9 (participation on same terms),
  - paragraph 10 (no preferential treatment for directors and senior employees),
  - paragraph 11 (no further conditions), and
  - paragraph 12 (no loan arrangements).

#### *The purpose of the plan*

- 7 (1) The purpose of the plan must be to provide benefits to employees in the nature of shares in a company which give them a continuing stake in that company.
- (2) The plan must not contain, and the operation of the plan must not involve, features which are neither essential nor reasonably incidental to that purpose.

#### *All-employee nature of plan*

- 8 (1) The plan must provide that every employee who—
- (a) meets the requirements of Part 3 of this Schedule (eligibility of individuals) in relation to an award of shares under the plan, and
  - (b) is a UK resident taxpayer,
- is eligible to participate in the award, and is invited to do so.
- (2) An employee is a UK resident taxpayer if the employee's earnings from the employment by reference to which the employee meets the employment requirement are (or would be if there were any) general earnings to which section 15 or 21 applies (earnings for year when employee resident and ordinarily resident in the UK).
- (3) The plan must not contain any feature which has or is likely to have the effect of discouraging any description of employees within sub-paragraph (1) from participating in an award of shares under the plan.
- (4) Sub-paragraph (3) does not apply to any provision required or authorised by this Schedule.
- (5) The plan may provide that an employee who—
- (a) meets the requirements of Part 3 of this Schedule (eligibility of individuals) in relation to an award of shares under the plan, but
  - (b) is not a UK resident taxpayer (see sub-paragraph (2)),
- is eligible to participate in the award, and may be invited to do so.
- (6) For the purposes of the SIP code an individual is a “qualifying employee”, in relation to an award of shares, if the individual—
- (a) is eligible to participate in it under sub-paragraph (1), or

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- (b) is eligible to participate in it under sub-paragraph (5) and has been invited to do so.

*Participation on same terms*

- 9 (1) The requirement of this paragraph is that—
- (a) every employee who is invited to participate in an award must be invited to participate on the same terms, and
  - (b) those who do participate must actually do so on the same terms.
- (2) The requirement of this paragraph is infringed by the awarding of free shares by reference to factors other than those mentioned in sub-paragraph (3).
- (3) The requirement of this paragraph is not infringed by the awarding of free shares by reference to—
- (a) an employee’s remuneration,
  - (b) an employee’s length of service, or
  - (c) hours worked by an employee;
- but this is subject to sub-paragraph (4).
- (4) If the awarding of free shares is by reference to more than one of the factors mentioned in sub-paragraph (3), the requirement of this paragraph is infringed unless—
- (a) each factor gives rise to a separate entitlement related to the level of remuneration, length of service or (as the case may be) hours worked, and
  - (b) the total entitlement is the sum of those separate entitlements.
- (5) In the case of an award of free shares which provides for performance allowances, this paragraph has effect as provided in—
- (a) paragraph 41 (performance allowances: method one), or
  - (b) paragraph 42 (performance allowances: method two).
- (6) In sub-paragraph (5) “performance allowances” has the meaning given in paragraph 34(4).
- (7) In the case of an award of partnership shares, the requirement of this paragraph is not infringed by the operation of any percentage limit specified in or under paragraph 46(2) or (3) (maximum amount of deductions) so far as the application of that limit to employees with different levels of remuneration results in deductions of different amounts or in the award of different numbers of shares.

*No preferential treatment for directors and senior employees*

- 10 (1) The first requirement of this paragraph is that no feature of the plan has or is likely to have the effect of conferring benefits wholly or mainly—
- (a) on directors, or
  - (b) on employees receiving the higher or highest levels of remuneration.
- (2) The second requirement of this paragraph applies only if the plan is established by a company that is a member of a group.

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- (3) The requirement is that the identity of the company (or, if it is a group plan, the constituent companies) must not be such that the plan has or is likely to have the effect of conferring benefits wholly or mainly—
- (a) on employees of companies that are members of the group who receive the higher or highest levels of remuneration, or
  - (b) on directors of such companies.
- (4) The requirements of this paragraph are not infringed by the awarding of free shares in circumstances where (as a result of paragraph 9(3) and (4)) that would not constitute an infringement of the requirements of paragraph 9.

*No further conditions*

- 11 No conditions apart from those required or authorised by this Schedule may be imposed on an employee's participation in an award of shares under the plan.

*No loan arrangements*

- 12 (1) The arrangements for the plan must not make any provision, or be associated in any way with any provision made, for loans to some or all of the employees of—
- (a) the company, or
  - (b) in the case of a group plan, of any constituent company.
- (2) The operation of the plan must not be associated in any way with such loans.
- (3) In sub-paragraph (1) “arrangements” includes any scheme, agreement, undertaking or understanding, whether or not legally enforceable.

### PART 3

#### ELIGIBILITY OF INDIVIDUALS

*Eligibility of individuals: introduction*

- 13 A SIP must meet the plan requirements contained in—
- paragraph 14 (time of eligibility to participate),
  - paragraph 15 (the employment requirement),
  - [<sup>F277</sup>paragraph 18 (requirement not to participate simultaneously in connected SIPs), paragraph 18A (successive participation in connected SIPs), and]
  - paragraph 19 (the “no material interest” requirement).

#### Textual Amendments

**F277** Words in [Sch. 2 para. 13](#) substituted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 3](#)

*Time of eligibility to participate*

- 14 (1) The plan must provide that an individual may only participate in an award of shares if the individual is eligible to participate in the award at the appropriate time mentioned below.

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- (2) In the case of an award of free shares, the appropriate time is the time when the award is made.
- (3) In the case of an award of partnership shares where the plan does not provide for an accumulation period, the appropriate time is the time of the deduction of the partnership share money relating to the award.
- (4) In the case of an award of partnership shares where the plan does provide for an accumulation period, the appropriate time is the time of the first deduction of partnership share money relating to the award.
- (5) In the case of an award of matching shares where the plan does not provide for an accumulation period, the appropriate time is the time of the deduction of the partnership share money relating to the award of partnership shares to which the matching shares relate.
- (6) In the case of an award of matching shares where the plan does provide for an accumulation period, the appropriate time is the time of the first deduction of partnership share money relating to the award of partnership shares to which the matching shares relate.
- (7) For the purposes of this paragraph an individual is eligible to participate in an award of shares under the plan if and only if the requirements of the plan are met as to—
  - (a) employment (see paragraph 15),
  - <sup>[F278]</sup>(b) not participating simultaneously in connected SIPs (see paragraph 18),
  - (ba) successive participation in connected SIPs (see paragraph 18A), and]
  - (c) not having a material interest (see paragraph 19).
- (8) In the case of an individual within paragraph 8(5) (all-employee nature of plan: non-UK resident taxpayer), the individual is not eligible to participate in an award of shares under the plan unless (in addition to the requirements mentioned in sub-paragraph (7)) any further eligibility requirements of the plan are met.

#### Textual Amendments

**F278** Sch. 2 para. 14(7)(b)(ba) substituted for Sch. 2 para. 14(7)(b) (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 4](#)

#### *The employment requirement*

- 15 (1) The plan must provide that an individual is not eligible to participate in an award of shares unless the individual meets the requirement in sub-paragraph (2).
- (2) The requirement is that the individual—
  - (a) is an employee of—
    - (i) the company, or
    - (ii) in the case of a group plan, a constituent company, and
  - (b) if the plan provides for a qualifying period, has at all times during that period been an employee of a qualifying company.
- (3) In the SIP code “the employment requirement” means the requirement in sub-paragraph (2).



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- (4) This paragraph is supplemented—
- (a) as regards qualifying periods, by paragraph 16, and
  - (b) as regards the meaning of “qualifying company”, by paragraph 17.

*Qualifying periods*

- 16 (1) This paragraph applies if the plan provides for a qualifying period in relation to an award.
- (2) In the case of an award of free shares, the qualifying period must be a period of not more than 18 months ending with the date on which the award is made.
- (3) In the case of an award of partnership shares where the plan does not provide for an accumulation period, the qualifying period must be a period of not more than 18 months ending with the deduction of partnership share money relating to the award.
- (4) In the case of an award of partnership shares where the plan does provide for an accumulation period, the qualifying period must be a period of not more than 6 months ending with the start of the accumulation period relating to the award.
- (5) In the case of an award of matching shares where the plan does not provide for an accumulation period, the qualifying period must be a period of not more than 18 months ending with the deduction of partnership share money relating to the award of partnership shares to which the matching shares relate.
- (6) In the case of an award of matching shares where the plan does provide for an accumulation period, the qualifying period must be a period of not more than 6 months ending with the start of the accumulation period relating to the award of partnership shares to which the matching shares relate.
- (7) In relation to an award, the same qualifying period must apply in relation to all employees—
- (a) of the company, or
  - (b) in the case of a group plan, of the constituent companies.
- (8) The plan may authorise the company to specify different qualifying periods in respect of different awards of shares, but the requirements in sub-paragraphs (2) to (7) apply to periods so specified.

*Meaning of “qualifying company”*

- 17 (1) For the purposes of paragraph 15(2) “qualifying company” has the meaning given by this paragraph.
- (2) Except in the case of a group plan, “qualifying company” means—
- (a) the company, or
  - (b) a company that, when the individual was employed by it, was an associated company—
    - (i) of the company, or
    - (ii) of another company qualifying under this paragraph.
- (3) In the case of a group plan, “qualifying company” means—
- (a) a company that is a constituent company at the end of the qualifying period mentioned in paragraph 15(2),

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- (b) a company that, when the individual was employed by it, was a constituent company, or
- (c) a company that, when the individual was employed by it, was an associated company of—
  - (i) a company qualifying under paragraph (a) or (b), or
  - (ii) another company qualifying under this paragraph.

*Requirement not to participate in other SIPs*

- 18 (1) The plan must provide that an individual is not eligible to participate in an award of free, matching or partnership shares under the plan in a tax year if the individual—
- <sup>F279</sup>(a) . . . . .
- (b) is at the same time to participate, in an award of shares under another approved SIP established by the company or a connected company.
- (2) For the purposes of this paragraph an individual is to be treated as having participated in an award of free shares under a SIP if the individual would have participated in that award but for the individual’s failure to obtain a performance allowance (see paragraph 34).
- (3) In this paragraph “connected company” means—
- (a) a company which controls or is controlled by the company or which is controlled by a company which also controls the company, or
  - (b) a company which is a member of a consortium owning the company or which is owned in part by the company as a member of a consortium.

**Textual Amendments**

**F279** Sch. 2 para. 18(1)(a) repealed (10.7.2003) by Finance Act 2003 (c. 14), Sch. 21 para. 5, Sch. 43 Pt. 3(3)

<sup>F280</sup>*Participation in more than one connected SIP in a tax year*

**Textual Amendments**

**F280** Sch. 2 para. 18A and cross-heading inserted (10.7.2003) by Finance Act 2003 (c. 14), Sch. 21 para. 2

- 18A (1) The plan must provide that, if an individual participates in an award of shares under the plan in a tax year in which he has already participated in an award of shares under one or more other approved SIPs established by the company or a connected company—
- (a) paragraph 35 (maximum annual award of free shares),
  - (b) paragraph 46 (maximum amount of partnership share money deductions), and
  - (c) paragraph 64 (limit on amount reinvested),
- apply as if the plan and the other plan or plans were a single plan.
- (2) In this paragraph “connected company” has the same meaning as in paragraph 18.]

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*The “no material interest” requirement*

- 19 (1) The plan must provide that an individual is not eligible to participate in an award of shares on any date if the individual has on that date, or has had within the 12 months ending with that date, a material interest in—
- (a) a close company whose shares may be awarded under the plan, or
  - (b) a company which has control of such a company or is a member of a consortium which owns such a company.
- (2) For the purposes of this paragraph an individual is to be regarded as having a material interest in a company if—
- (a) the individual,
  - (b) the individual together with one or more of the individual’s associates, or
  - (c) any such associate, with or without any other such associates,
- has a material interest in the company.
- (3) This paragraph is supplemented—
- (a) as regards the meaning of “material interest”, by paragraphs 20 and 21, and
  - (b) as regards the meaning of “associate”, by paragraphs 22 to 24.

*Meaning of “material interest”*

- 20 (1) In paragraph 19 (the “no material interest” requirement) references to a “material interest” in a company are to—
- (a) a material interest in the share capital of the company, or
  - (b) where it is a close company, a material interest in its assets.
- (2) A material interest in the share capital of a company means—
- (a) beneficial ownership of, or
  - (b) the ability to control (directly or through the medium of other companies or by any other indirect means),
- more than 25% of the ordinary share capital of the company.
- (3) A material interest in the assets of a close company means—
- (a) possession of, or
  - (b) an entitlement to acquire,
- such rights as would, in the event of the winding up of the company or in any other circumstances, give an entitlement to receive more than 25% of the assets that would then be available for distribution among the participators.
- (4) In this paragraph—
- “close company” includes a company that would be a close company but for—
    - (a) section 414(1)(a) of ICTA (exclusion of companies not resident in the United Kingdom), or
    - (b) section 415 of ICTA (exclusion of certain quoted companies), and“participator” has the meaning given by section 417(1) of ICTA.
- (5) This paragraph is supplemented by paragraph 21 (material interest: options and interests in SIPs).

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*Material interest: options and interests in SIPs*

- 21 (1) This paragraph applies for the purposes of paragraph 20 (meaning of “material interest”).
- (2) A right to acquire shares (however arising) is to be treated as a right to control them.
- (3) Sub-paragraph (4) applies in a case where—
- (a) the shares to be attributed to an individual consist of or include shares which the individual or another person has a right to acquire, and
  - (b) the circumstances are such that, if that right were to be exercised, the shares acquired would be shares which were previously unissued and which the company would be contractually bound to issue in the event of the exercise of the right.
- (4) In determining at any time prior to the exercise of the right whether the number of shares to be attributed to the individual exceeds 25% of the ordinary share capital of the company, that ordinary share capital is to be treated as increased by the number of unissued shares referred to in sub-paragraph (3)(b).
- (5) The references in sub-paragraphs (3) and (4) to the shares to be attributed to an individual are to the shares which—
- (a) for the purposes of paragraph 20(2) (material interest in share capital), and
  - (b) in accordance with paragraph 19(2) (material interest can consist of or include that of the individual’s associates),
- fall to be brought into account in the individual’s case so that it can be determined whether their number exceeds 25% of the company’s ordinary share capital.
- (6) In applying paragraph 20 the following are to be disregarded—
- (a) the interest of the trustees of any approved SIP in any shares which are held by them in accordance with the plan but which have not been appropriated to, or acquired on behalf of, an individual, and
  - (b) any rights exercisable by the trustees as a result of that interest.

*Meaning of “associate”*

- 22 (1) In paragraph 19(2) (the “no material interest” requirement) “associate”, in relation to an individual, means—
- (a) any relative or partner of the individual,
  - (b) the trustee or trustees of any settlement in relation to which the individual, or any of the individual’s relatives (living or dead), is or was a settlor, and
  - (c) where the individual is interested in any shares or obligations of the company mentioned in paragraph 19(2) which are subject to any trust, or are part of the estate of a deceased person—
    - (i) the trustee or trustees of the settlement concerned, or
    - (ii) the personal representatives of the deceased,
 as the case may be.
- (2) Sub-paragraph (1)(c) needs to be read with paragraphs 23 and 24 (which relate to employee benefit trusts and discretionary trusts).
- (3) In this paragraph—  
“relative” means—

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- (a) spouse,
- (b) parent, child or remoter relation in the direct line, or
- (c) brother or sister;

“settlor” and “settlement” have the same meaning as in [<sup>F281</sup>Chapter 5 of Part 5 of ITTOIA 2005 (see section 620 of that Act)] .

#### Textual Amendments

**F281** Words in Sch. 2 para. 22(3) substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), Sch. 1 para. 617(2) (with Sch. 2)

#### *Meaning of “associate”: trustees of employee benefit trust*

- 23 (1) This paragraph applies for the purposes of paragraph 22(1)(c) (meaning of “associate”: trustees of settlement) where an individual is interested as a beneficiary of an employee benefit trust in shares or obligations of the company mentioned in paragraph 19(2).
- (2) The trustees of the employee benefit trust are not to be regarded as associates of the individual as a result only of the individual’s being so interested if neither—
- (a) the individual, nor
  - (b) the individual together with one or more of the individual’s associates, nor
  - (c) any such associate, with or without any other such associates,
- has at any time after 13th March 1989 been the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control, more than 25% of the ordinary share capital of the company.
- (3) In sub-paragraph (2)(b) and (c) “associate” has the meaning given by paragraph 22(1), but does not include the trustees of an employee benefit trust as a result only of the individual’s having an interest in shares or obligations of the trust.
- (4) Chapter 11 of Part 7 of this Act (which deals with the attribution of interests in companies to beneficiaries of employee benefit trusts) applies for the purposes of sub-paragraph (2).
- (5) In this paragraph “employee benefit trust” has the same meaning as in that Chapter (see sections 550 and 551).

#### *Meaning of “associate”: trustees of discretionary trust*

- 24 (1) This paragraph applies for the purposes of paragraph 22(1)(c) (meaning of “associate”: trustees of settlement) where—
- (a) the individual (“the beneficiary”) is one of the objects of a discretionary trust,
  - (b) the property subject to the trust has at any time consisted of, or included, shares or obligations of the company mentioned in paragraph 19(2),
  - (c) the beneficiary has ceased to be eligible to benefit under the trust as a result of—
    - (i) an irrevocable disclaimer or release executed by the beneficiary, or
    - (ii) the irrevocable exercise by the trustees of a power to exclude the beneficiary from the objects of the trust,

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- (d) immediately after the beneficiary ceased to be so eligible, no associate of the beneficiary was interested in the shares or obligations of the company which were subject to the trust, and
  - (e) during the period of 12 months ending with the date on which the beneficiary ceased to be so eligible, neither the beneficiary nor any associate of the beneficiary received any benefit under the trust.
- (2) The beneficiary is not, as a result only of the matters mentioned in sub-paragraph (1) (a) and (b), to be regarded as having been interested in the shares or obligations of the company at any time during that period of 12 months.
- (3) In sub-paragraph (1) “associate” has the meaning given by paragraph 22(1), but with the omission of paragraph (c) (trusts and estates).

#### PART 4

##### TYPES OF SHARES THAT MAY BE AWARDED

###### *Types of share that may be awarded: introduction*

- 25 (1) The requirements of the following paragraphs must be met with respect to any shares that may be awarded under a SIP—
- paragraph 26 (shares must be part of ordinary share capital of certain companies),
  - paragraph 27 (requirement as to listing etc.),
  - paragraph 28 (shares must be fully paid up and not redeemable),
  - paragraph 29 (prohibited shares), and
  - paragraph 30 (only certain kinds of restriction allowed).
- (2) In this Part of this Schedule “eligible shares” means shares that may be awarded under the plan.

###### *Shares must be part of ordinary share capital of certain companies*

- 26 Eligible shares must form part of the ordinary share capital of—
- (a) the company,
  - (b) a company which has control of the company, or
  - (c) a company which either is, or has control of, a company which is a member of a consortium owning either the company or a company having control of the company.

###### *Requirement as to listing etc.*

- 27 (1) Eligible shares must be—
- (a) shares of a class listed on a recognised stock exchange,
  - (b) shares in a company which is not under the control of another company, or
  - (c) shares in a company which is under the control of a listed company.
- (2) A “listed company” is a company whose shares are listed on a recognised stock exchange, other than—
- (a) a close company, or

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- (b) a company that would be a close company if resident in the United Kingdom.

*Shares must be fully paid up and not redeemable*

- 28 (1) Eligible shares must be—
- (a) fully paid up, and
  - (b) not redeemable.
- (2) For the purposes of sub-paragraph (1)(a) shares are not to be regarded as fully paid up if there is an undertaking to pay cash at a future date to the company whose shares they are.
- (3) For the purposes of sub-paragraph (1)(b) “redeemable” shares include shares that may become redeemable at a future date.
- (4) Sub-paragraph (1)(b) does not apply to shares in a registered industrial and provident society which is a co-operative society.
- (5) In sub-paragraph (4)—
- “registered industrial and provident society” means a society registered or deemed to be registered under the Industrial and Provident Societies Act 1965 (c. 12) or the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24 (N.I.)), and
  - “co-operative society” has the same meaning as in section 1 of the 1965 Act or, as the case may be, the 1969 Act.

*Prohibited shares*

- 29 (1) Eligible shares must not be shares in—
- (a) a service company, or
  - (b) a company that—
    - (i) has control of a service company, and
    - (ii) is under the control of a person or persons who fall within sub-paragraph (2)(b)(i) or (ii) as it applies to a service company.
- (2) For the purposes of this paragraph a company is a “service company” if—
- (a) the business carried on by it consists substantially in the provision of the services of persons employed by it, and
  - (b) the majority of those services are provided to—
    - (i) a person who has control of the company,
    - (ii) two or more persons who together have control of the company, or
    - (iii) a company associated with the company.
- (3) For the purposes of sub-paragraph (2)(b)(iii) a company is associated with another company if both companies are under the control of the same person or persons.
- (4) For the purposes of sub-paragraphs (1) to (3)—
- (a) a partnership is to be treated as a single person; and
  - (b) where a partner (alone or together with others) has control of a company, the partnership is to be treated as having (in the same way) control of that company.

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- (5) For the purposes of this paragraph the question whether a person controls a company is to be determined in accordance with section 416(2) to (6) of ICTA.

*Only certain kinds of restriction allowed*

- 30 (1) Eligible shares must not be subject to any restrictions other than—
- (a) those affecting all ordinary shares in the company,
  - (b) those permitted by—
    - (i) paragraph 31 (voting rights),
    - (ii) paragraph 32 (provision for forfeiture), or
    - (iii) paragraph 33 (pre-emption conditions), or
  - (c) those involved in there being a holding period (see paragraphs 36, 61 and 67).
- (2) For the purposes of this paragraph shares are subject to a restriction if there is any contract, agreement, arrangement or condition—
- (a) by which a person's freedom to dispose of the shares or of any interest in them or of the proceeds of their sale or to exercise any right conferred by them is restricted, or
  - (b) by which such a disposal or exercise may result in any disadvantage to the person or to a person connected with the person.
- This is subject to sub-paragraphs (3) and (4).
- (3) Sub-paragraph (2) does not extend 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 Code as (for the time being) set out in the listing rules issued by the competent authority for listing in the United Kingdom under section 74(4) of the Financial Services and Markets Act 2000 (c. 8).
- (4) Any discretion of the directors under the articles of association of the company to refuse to accept the transfer of shares is to be disregarded for the purposes of this paragraph if the directors—
- (a) have undertaken to the Inland Revenue not to exercise it in such a way as to discriminate against participants, and
  - (b) have notified all qualifying employees of the existence of the undertaking.

*Permitted restrictions: voting rights*

- 31 Eligible shares may be shares carrying no voting rights or limited voting rights.

*Permitted restrictions: provision for forfeiture*

- 32 (1) Free or matching shares may be subject to provision for forfeiture—
- (a) on the participant ceasing to be in relevant employment at any time in the forfeiture period,
  - (b) on the participant withdrawing the shares from the plan at any such time, or
  - (c) in the case of matching shares, on the participant withdrawing from the plan at any such time the partnership shares in respect of which those shares were awarded.



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- (2) Sub-paragraph (1)(a) does not, however, authorise the making of provision for forfeiture on the participant ceasing to be in relevant employment—
  - (a) because of injury or disability,
  - (b) on being dismissed by reason of redundancy,
  - (c) by reason of a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 1981 (S.I. 1981/1794) apply,
  - (d) if the relevant employment is employment by an associated company (see paragraph 95(2)), by reason of a change of control or other circumstances ending that company's status as an associated company,
  - (e) by reason of the participant's retirement on or after reaching the specified retirement age (see paragraph 98), or
  - (f) on the participant's death.
- (3) Forfeiture may not be linked to the performance of any person or persons.
- (4) The same provision for forfeiture must apply in relation to all free or matching shares included in the same award under the plan.
- (5) In this paragraph “the forfeiture period” means the forfeiture period specified in the plan, which must be a period of not more than 3 years beginning with the date on which the shares were awarded to the participant.

*Permitted restrictions: pre-emption conditions*

- 33
- (1) If the requirements of this paragraph are met, eligible shares may be subject to provision requiring shares—
    - (a) that were awarded to an employee under the plan, and
    - (b) that are held by an employee or a permitted transferee,to be offered for sale on the employee ceasing to be in relevant employment.
  - (2) For the purposes of sub-paragraph (1)(b) a “permitted transferee” means a person to whom, under the articles of association of the company, the employee is permitted to transfer the shares.
  - (3) The requirements of this paragraph are that under the articles of association of the company—
    - (a) the same provision applies to all employees of the company or, in the case of a parent company, to all employees of that company or any company of which that company has control,
    - (b) the shares are required to be offered for sale at a specified consideration, and
    - (c) anyone disposing of shares of the same class (whether or not as an employee) is required to offer the shares for sale on no better terms.

**PART 5**

FREE SHARES

*Free shares: introduction*

- 34
- (1) If a SIP provides for free shares, it must meet the plan requirements contained in—  
paragraph 35 (maximum annual award), and

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paragraph 36 (the holding period).

- (2) If a SIP provides for free shares and for performance allowances, the requirements of the following paragraphs also apply—
- paragraph 38 (performance allowances: general application),
  - paragraph 39 (performance allowances: targets and measures),
  - paragraph 40 (performance allowances: information to be given to employees),
  - and
  - either paragraph 41 or 42 (performance allowances: methods of awarding shares).
- (3) The plan must meet any plan requirements contained in those paragraphs.
- (4) For the purpose of the SIP code a plan provides for performance allowances if it provides for—
- (a) whether or not free shares will be awarded to an individual, or
  - (b) the number or value of free shares awarded,
- to be conditional on performance targets being met.

#### *Maximum annual award*

- 35 (1) The plan must provide that the initial market value of the free shares awarded to a participant in a tax year is not to exceed £3,000.
- (2) The “initial market value” of shares means their market value on the date on which they are awarded.
- [<sup>F282</sup>(3) For the purposes of this paragraph the market value of restricted shares is to be determined as if they were not.
- (4) Shares are “restricted shares” if there is any contract, agreement, arrangement or condition which makes provision to which any of subsections (2) to (4) of section 423 (restricted securities) would apply if the references in those subsections to the employment-related securities were to the shares.]

#### **Textual Amendments**

**F282** Sch. 2 para. 35(3)(4) substituted (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 43\(1\)\(2\)](#); [S.I. 2003/1997](#), art. 2

#### *The holding period*

- 36 (1) The plan must require the company in respect of each award of free shares to specify a period (“the holding period”) during which a participant is bound by contract with the company—
- (a) to permit the free shares awarded to the participant to remain in the hands of the trustees, and
  - (b) not to assign, charge or otherwise dispose of the beneficial interest in the shares.
- (2) The holding period—

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- (a) must be a period of at least 3 years but not more than 5 years, beginning with the date on which the shares in question are awarded to the participant, and
  - (b) must be the same for all shares in the same award.
- (3) The plan—
- (a) may authorise the company to specify different holding periods from time to time, but
  - (b) must prevent the company from increasing the holding period specified in respect of free shares that have been awarded under the plan.
- (4) The participant’s obligations with respect to the holding period are subject to—
- (a) paragraph 37 (power to authorise trustees to accept general offers etc.),
  - (b) paragraph 79 (meeting by trustees of PAYE obligations), and
  - (c) paragraph 90(5) (termination of plan: early removal of shares with participant’s consent).
- (5) If at any time in the holding period the participant ceases to be in relevant employment, the participant’s obligations with respect to that period come to an end.

*Holding period: power of participant to direct trustees to accept general offers etc.*

- 37 (1) A participant may direct the trustees to do any of the following during the holding period.
- (2) The participant may direct the trustees to accept an offer for any of the participant’s free shares (“the original shares”) if the acceptance or agreement will result in a new holding being equated with the original shares for the purposes of capital gains tax.
  - (3) The participant may direct the trustees to agree to a transaction affecting the participant’s free shares, or such of them as are of a particular class, if the transaction would be entered into as a result of a compromise, arrangement or scheme applicable to or affecting—
    - (a) all the ordinary share capital of the company or, as the case may be, all the shares of the class in question, or
    - (b) all the shares, or all the shares of the class in question, which are held by a class of shareholders identified otherwise than by reference to their employment or their participation in an approved SIP.
  - (4) The participant may direct the trustees to accept an offer for the participant’s free shares of—
    - (a) cash, with or without other assets, or
    - (b) a qualifying corporate bond (whether alone or with other assets or cash or both),if the offer forms part of a general offer falling within sub-paragraph (5).
  - (5) A general offer falls within this sub-paragraph if—
    - (a) it is made to holders of shares of the same class as the participant’s or to holders of shares in the same company, and
    - (b) it is made in the first instance on a condition such that if it is satisfied the person making the offer will have control of that company.
  - (6) In sub-paragraph (5) “control” has the meaning given by section 416 of ICTA.

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*Performance allowances: general application*

- 38 A plan that provides for performance allowances in relation to an award must make provision for such allowances for all qualifying employees in relation to that award.

*Performance allowances: targets and measures*

- 39 (1) A plan that provides for performance allowances must comply with the following requirements with respect to performance targets and performance measures.
- (2) The performance targets must be set for performance units comprising one or more employees.
- (3) The performance measures used must—
- (a) be based on business results or other objective criteria, and
  - (b) be fair and objective measures of the performance of the units to which they are or may be applied.
- (4) For the purposes of an award of free shares under the plan an employee must not be a member of more than one performance unit.

*Performance allowances: information to be given to employees*

- 40 (1) A plan that provides for performance allowances in relation to an award of shares must require the company—
- (a) to notify each qualifying employee who has accepted an invitation to participate in the award of the performance targets and measures which, under the plan, will be used to determine the number or value of free shares awarded to the employee, and
  - (b) to notify all qualifying employees—
    - (i) of the company, or
    - (ii) in the case of a group plan, of any constituent company,
 in general terms, of the performance measures to be used to determine the number or value of free shares to be awarded to each employee participating in the award.
- (2) The notices must be given as soon as reasonably practicable.
- (3) The company may exclude from the notice mentioned in sub-paragraph (1)(b) any information whose disclosure the company reasonably considers would prejudice commercial confidentiality.

*Performance allowances: method one*

- 41 (1) The requirements of this paragraph are those contained in sub-paragraph (2).
- (2) In the case of an award in relation to which the plan provides for performance allowances—
- (a) at least 20% of the shares in the award must be awarded without reference to performance in accordance with the requirement of paragraph 9 (participation on same terms),
  - (b) the remaining shares must be awarded by reference to performance, and

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- (c) the highest number of shares within paragraph (b) awarded to an individual must not be more than four times the highest number of shares within paragraph (a) awarded to an individual.
- (3) In determining for the purposes of sub-paragraph (2)(a) whether the requirement of paragraph 9 is met, the shares to which sub-paragraph (2)(a) applies are to be treated as a separate award of free shares.
- (4) If the plan meets the requirements of this paragraph, the requirement of paragraph 9 does not apply to any provision of the plan relating to the awarding of shares within sub-paragraph (2)(b).
- (5) If free shares of different classes are awarded, the requirements of this paragraph apply separately in relation to each class.

*Performance allowances: method two*

- 42 (1) The requirements of this paragraph are those contained in sub-paragraphs (2) and (3).
- (2) In the case of an award in relation to which the plan provides for performance allowances—
- (a) some or all of the shares in the award must be awarded by reference to performance, and
  - (b) the awarding of the shares to qualifying employees who are members of the same performance unit must meet the requirement of paragraph 9 (participation on same terms).
- (3) The performance targets set in connection with such an award must be consistent targets (see sub-paragraph (6)).
- (4) In determining for the purposes of sub-paragraph (2)(b) whether the requirement of paragraph 9 is met, the free shares awarded in respect of each performance unit are to be treated as a separate award of free shares.
- (5) If this method is used, nothing in paragraph 9 requires the awarding of shares to members of different performance units to be on the same terms.
- (6) In sub-paragraph (3) “consistent targets” means targets which, at the time when they are set in accordance with the plan, can reasonably be viewed as being comparable in terms of the likelihood of their being met by the performance units to which they apply.

## PART 6

### PARTNERSHIP SHARES

*Partnership shares: introduction*

- 43 (1) If a SIP provides for partnership shares, the following paragraphs apply—
- paragraph 44 (partnership share agreements),
  - paragraph 45 (deductions from salary),
  - paragraph 46 (maximum amount of deductions),
  - paragraph 47 (minimum amount of deductions),

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paragraph 48 (notice of possible effect of deductions on benefit entitlement),  
paragraph 49 (partnership share money held for employee),  
paragraph 50 (application of money deducted where no accumulation periods),  
paragraph 51 (accumulation periods),  
paragraph 52 (application of money deducted in accumulation period),  
paragraph 53 (restriction on number of shares awarded),  
paragraph 54 (stopping and re-starting deductions),  
paragraph 55 (withdrawal from partnership share agreement),  
paragraph 56 (repayment of partnership share money on withdrawal of approval or termination), and  
paragraph 57 (access to partnership shares).

- (2) The plan must meet any plan requirements contained in those paragraphs.
- (3) References in the SIP code to the trustees acquiring partnership shares on behalf of an employee include their appropriating to an employee shares already held by them.
- (4) In the SIP code references to an employee’s “salary” are to be read as follows—
  - (a) in the case of an individual within the scope of the charge to tax under Part 2 of this Act, they are to be read as references to such of the earnings of the eligible employment—
    - (i) as are liable to be paid under deduction of tax under PAYE regulations, after deducting any amounts included by virtue of the benefits code, or
    - (ii) as would be liable to be so paid apart from the SIP code;
  - (b) in the case of an individual not within the scope of the charge to tax under Part 2 of this Act, they are to be read as references to such of the earnings of the eligible employment as would have fallen within sub-paragraph (i) or (ii) of paragraph (a) if the individual had been within the scope of that charge to tax.
- (5) In sub-paragraph (4) “the eligible employment” means the employment by reference to which the employee is eligible to participate in the plan.

#### *Partnership share agreements*

- 44 (1) The plan must provide for qualifying employees to enter into agreements with the company (“company A”) under which—
  - (a) the employee authorises the employer company to deduct part of the employee’s salary for the purchase of partnership shares, and
  - (b) company A undertakes to arrange for partnership shares to be awarded to the employee in accordance with the plan.
- (2) Such agreements are referred to in the SIP code as “partnership share agreements”.
- (3) In sub-paragraph (1) “the employer company” means the company by reference to which the employee meets the employment requirement in relation to the plan.

#### *Deductions from salary*

- 45 (1) The plan must provide for a partnership share agreement to be given effect by deductions from the employee’s salary.

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- (2) Amounts so deducted are referred to in the SIP code as “partnership share money”.
- (3) The partnership share agreement must specify—
  - (a) what amounts are to be deducted, and
  - (b) at what intervals;but this does not prevent the employee and the company agreeing to vary those amounts or intervals.
- (4) For the purposes of sub-paragraph (3)(a) the agreement may specify a percentage of the employee’s salary.
- (5) The plan must require the employer company to calculate the amounts and intervals having regard to paragraph 46 (maximum amount of deductions from salary).
- (6) In sub-paragraph (5) “the employer company” means the company by reference to which the employee meets the employment requirement in relation to the plan.

#### *Maximum amount of deductions*

- 46 (1) The amount of partnership share money deducted from an employee’s salary must not exceed [<sup>F283</sup>£1,500 in any tax year.]
- (2) The amount of partnership share money deducted from an employee’s salary [<sup>F284</sup>for any tax year must not exceed 10% of the employee’s salary for the tax year.]
- (3) The plan may authorise the company to specify lower limits than those specified in sub-paragraphs (1) and (2).
- (4) If it does so, different limits may be specified in relation to different awards of shares.
- [<sup>F285</sup>(4A) A limit lower than that specified in sub-paragraph (2) may be framed—
- (a) as a proposition substituting a percentage lower than that so specified, or
  - (b) as a proposition that a particular description of earnings is not to be regarded as forming part of an employee’s salary for the purposes of that sub-paragraph.]
- (5) Any amount deducted in excess of that allowed by sub-paragraph (1) or (2), or any lower limit in the plan, must be paid over to the employee as soon as practicable.

#### **Textual Amendments**

**F283** Words in Sch. 2 para. 46(1) substituted (with effect in accordance with Sch. 21 para. 7(5) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 7\(2\)](#)

**F284** Words in Sch. 2 para. 46(2) substituted (with effect in accordance with Sch. 21 para. 7(5) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 7\(3\)](#)

**F285** Sch. 2 para. 46(4A) inserted (10.7.2003) by virtue of [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 7\(4\)](#)

#### *Minimum amount of deductions*

- 47 (1) The plan may provide that the amount to be deducted under a partnership share agreement [<sup>F286</sup>on any occasion] must not be less than a minimum amount specified in the plan.

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(2) The specified minimum amount must not be greater than £10.

<sup>F287</sup>(3) .....

#### Textual Amendments

**F286** Words in [Sch. 2 para. 47](#) substituted (10.7.2003) by [Finance Act 2003 \(c. 14\), Sch. 21 para. 8\(a\)](#)

**F287** [Sch. 2 para. 47\(3\)](#) repealed (10.7.2003) by [Finance Act 2003 \(c. 14\), Sch. 21 para. 8\(b\), Sch. 43 Pt. 3\(3\)](#)

#### *Notice of possible effect of deductions on benefit entitlement*

- 48 (1) The plan must provide that the company may not enter into a partnership share agreement with an employee unless the agreement contains a notice under this paragraph.
- (2) A notice under this paragraph is a notice in a prescribed form containing prescribed information as to the possible effect of deductions on an employee's entitlement to social security benefits, statutory sick pay and statutory maternity pay.
- (3) In this paragraph "prescribed" means prescribed by regulations made by the Board of Inland Revenue.

#### *Partnership share money held for employee*

- 49 (1) The plan must provide that partnership share money deducted under a partnership share agreement is—
- paid to the trustees as soon as practicable, and
  - held by them on behalf of the employee until such time as it is applied by them in acquiring partnership shares on the employee's behalf.
- (2) Sub-paragraph (1) is subject to paragraphs 50(5)(b) and 52(6)(b) and (7) (obligations to pay money to the employee).
- (3) The plan must provide for the trustees to keep any money required to be held by them under this paragraph in an account (interest bearing or otherwise) with—
- a person falling within section 840A(1)(b) of ICTA (certain institutions permitted to accept deposits),
  - a building society, or
  - a firm falling within section 840A(1)(c) of ICTA (EEA firms permitted to accept deposits).
- (4) The plan must provide for the trustees to account to an employee for the interest if the partnership share money held on behalf of the employee is held in an interest bearing account.

#### *Application of money deducted where no accumulation periods*

- 50 (1) If the plan does not provide for an accumulation period, it must provide for partnership share money to be applied by the trustees in acquiring partnership shares on behalf of the employee on the acquisition date.
- (2) The number of shares awarded to each employee must be determined in accordance with the market value of the shares on the acquisition date.



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- (3) Sub-paragraphs (1) and (2) are subject to paragraph 53 (restriction on number of shares awarded).
- (4) In those sub-paragraphs “the acquisition date” means the date set by the trustees in relation to the award of partnership shares, which must be not later than 30 days after the last date on which the partnership share money to be applied in acquiring the shares was deducted.
- (5) Any surplus partnership share money remaining after the acquisition of shares by the trustees—
  - (a) may with the agreement of the employee be carried forward and added to the amount of the next deduction, and
  - (b) in any other case must be paid over to the employee as soon as practicable.

#### *Accumulation periods*

- 51
- (1) The plan may provide for accumulation periods not exceeding 12 months.
  - (2) If the plan does so, the following provisions apply.
  - (3) The partnership share agreements—
    - (a) must specify when each accumulation period begins and ends;
    - (b) may specify that an accumulation period comes to an end on the occurrence of a specified event.
  - (4) However—
    - (a) the beginning of the first accumulation period must not be later than the date on which the first deduction of partnership share money is made; and
    - (b) the accumulation period which applies in relation to each award of partnership shares must be the same for all individuals entering into the partnership share agreements.
  - (5) The plan may also provide that if—
    - (a) during an accumulation period, a transaction occurs in relation to any of the shares (“the original holding”) to be acquired under a partnership share agreement which results in a new holding of shares being equated with the original holding for the purposes of capital gains tax, and
    - (b) the employee consents,the partnership share agreement is to have effect after the time of the transaction as if it were an agreement for the purchase of the shares comprised in the new holding.

#### *Application of money deducted in accumulation period*

- 52
- (1) This paragraph applies if the plan provides for one or more accumulation periods.
  - (2) The plan must provide for the partnership share money deducted in each accumulation period under a partnership share agreement to be applied by the trustees in acquiring partnership shares on behalf of the employee on the acquisition date.
  - (3) The number of shares awarded to each employee must be determined in accordance with the lower of—
    - (a) the market value of the shares at the beginning of the accumulation period, and

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- (b) the market value of the shares on the acquisition date.
- (4) Sub-paragraphs (2) and (3) are subject to sub-paragraphs (7) and (8) and to paragraph 53 (restriction on number of shares awarded).
- (5) In sub-paragraphs (2) and (3) “the acquisition date” means the date set by the trustees in relation to the award of partnership shares, which must be not later than 30 days after the end of the accumulation period which applies in relation to the award.
- (6) Any surplus partnership share money remaining after the acquisition of shares by the trustees—
  - (a) may with the agreement of the employee be carried forward to the next accumulation period, and
  - (b) in any other case must be paid over to the employee as soon as practicable.
- (7) The plan must provide that where the employee ceases to be in relevant employment during an accumulation period, any partnership share money deducted in the period is to be paid over to the individual as soon as practicable.
- (8) The partnership share agreement may provide that, where an accumulation period comes to an end on the occurrence of a specified event, the partnership share money deducted in that period must be paid over to the individual as soon as practicable instead of being applied in acquiring shares.

*Restriction on number of shares awarded*

- 53 (1) The plan may authorise the company to specify the maximum number of shares (“the award maximum”) to be included in an award of partnership shares.
- (2) If the plan does so—
  - (a) a different number may be specified by the company in relation to different awards, and
  - (b) the following provisions apply to the plan.
- (3) The plan must require partnership share agreements to contain an undertaking by the company to notify the employee of any restriction on the number of shares to be included in an award.
- (4) The plan must require the notice to be given—
  - (a) if there is no accumulation period, before the deduction of the partnership share money relating to the award, and
  - (b) if there is an accumulation period, before the beginning of the accumulation period relating to the award.
- (5) The plan must provide that, where the award maximum in respect of an award of partnership shares is smaller than the number of shares which would otherwise be included in the award, the number of partnership shares acquired on behalf of each employee under paragraph 50(1) or 52(2) must be reduced proportionately.

*Stopping and re-starting deductions*

- 54 (1) The plan must provide that an employee may at any time give notice to the company to stop deductions under a partnership share agreement.

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- (2) The plan must provide that, unless a later date is specified in the notice, the company must, on receiving a notice within sub-paragraph (1), ensure within 30 days after receipt of the notice that no further deductions are made by it under the partnership share agreement.
- (3) The plan must also provide that an employee who has stopped deductions—
  - (a) may subsequently give notice to the company to re-start deductions under the agreement, but
  - (b) may not make up deductions that have been missed.
- (4) If the plan makes provision for one or more accumulation periods, it may prevent an employee re-starting deductions more than once in any accumulation period.
- (5) The plan must provide that, unless a later date is specified in the notice, the company must, on receiving a notice within sub-paragraph (3), re-start deductions under the partnership share agreement not later than the re-start date.
- (6) “The re-start date” means the date of the first deduction due under the partnership share agreement more than 30 days after receipt of the notice under sub-paragraph (3).
- (7) In this paragraph “notice” means notice in writing.

#### *Withdrawal from partnership share agreement*

- 55
- (1) The plan must provide that an employee may at any time give notice to the company of the employee’s withdrawal from a partnership share agreement.
  - (2) The plan must provide that, unless a later date is specified in the notice, a notice of withdrawal takes effect 30 days after it is received by the company.
  - (3) The plan must provide that, where an employee withdraws from a partnership share agreement, any partnership share money held on behalf of the employee is to be paid over to the employee as soon as practicable.
  - (4) In this paragraph “notice” means notice in writing.

#### *Repayment of partnership share money on withdrawal of approval or termination*

- 56
- (1) The plan must provide that, where the approval of the plan is withdrawn (see paragraph 83), any partnership share money held on behalf of an employee is to be paid over to the employee.
  - (2) The plan must require the payment to be made as soon as practicable after notice of the withdrawal of approval is given to the company.
  - (3) The plan must provide that, where a plan termination notice is issued in respect of the plan (see paragraph 90), any partnership share money held on behalf of an employee is to be paid over to the employee.
  - (4) The plan must require the payment to be made as soon as practicable after the plan termination notice is notified to the trustees under paragraph 89(2).

*Status: Point in time view as at 07/04/2005.*

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### *Access to partnership shares*

- 57 (1) The plan must provide that when partnership shares have been awarded to an employee, the employee may at any time withdraw any or all of the partnership shares from the plan.
- (2) If the employee does so, there may be a charge to tax by virtue of section 506 (charge on partnership shares ceasing to be subject to plan).

## **PART 7**

### **MATCHING SHARES**

#### *Matching shares: introduction*

- 58 If a SIP provides for matching shares it must meet the plan requirements contained in—
- paragraph 59 (general requirements for matching shares),  
paragraph 60 (ratio of matching shares to partnership shares), and  
paragraph 61 (holding period for matching shares).

#### *General requirements for matching shares*

- 59 (1) The plan must provide for the matching shares to be—
- (a) shares of the same class and carrying the same rights as the partnership shares to which they relate;
  - (b) awarded on the same day as the partnership shares to which they relate are awarded; and
  - (c) awarded to all employees who participate in the award on exactly the same basis.
- (2) Sub-paragraph (1) is subject to paragraph 32 (permitted restrictions: provision for forfeiture).

#### *Ratio of matching shares to partnership shares*

- 60 (1) The partnership share agreement must specify—
- (a) the ratio of matching shares to partnership shares for the time being offered by the company, and
  - (b) the circumstances and manner in which the ratio may be changed by the company.
- (2) The ratio must not exceed 2:1 and must be applied by reference to the number of shares.
- (3) A partnership share agreement must provide for the employee to be informed by the company if the ratio offered by the company changes before partnership shares are awarded to the employee under the agreement.

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*Holding period for matching shares*

- 61 Paragraphs 36 and 37 (the holding period and related matters) apply in relation to matching shares as they apply in relation to free shares.

**PART 8**

CASH DIVIDENDS AND DIVIDEND SHARES

*Reinvestment of cash dividends*

- 62 (1) A SIP may provide that, where the company so directs, the trustees must apply all cash dividends in respect of plan shares held on behalf of—
- (a) all participants, or
  - (b) all participants who elect to reinvest their dividends, in acquiring further shares on their behalf.
- (2) Sub-paragraph (1) is subject to paragraph 63 (requirements to be met as regards cash dividends).
- (3) In the SIP code—
- (a) the application of cash dividends as mentioned in sub-paragraph (1) is referred to as “reinvestment”; and
  - (b) the further plan shares acquired are referred to as “dividend shares”.
- (4) The company may revoke a direction requiring the reinvestment of cash dividends.
- (5) References in the SIP code to the trustees acquiring dividend shares on behalf of a participant include their appropriating to a participant shares already held by them.

*Requirements to be met as regards cash dividends*

- 63 (1) If a SIP makes the provision authorised by paragraph 62(1) (reinvestment of cash dividends), the following paragraphs apply—
- paragraph 64 (limit on amount reinvested),
  - paragraph 65 (general requirements as to dividend shares),
  - paragraph 66 (acquisition of dividend shares),
  - paragraph 67 (holding period for dividend shares), and
  - paragraph 68 (reinvestment: amounts to be carried forward).
- (2) The plan must meet any plan requirements contained in those paragraphs.
- (3) A SIP must in any event meet the plan requirement contained in paragraph 69 (cash dividends not required to be reinvested).

*Limit on amount reinvested*

- 64 (1) The plan must provide that the total dividend reinvestment in respect of a participant must not exceed £1,500 in a tax year.
- (2) For this purpose “the total dividend reinvestment” in respect of a participant is the sum of—

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- (a) the amount applied by the trustees in acquiring dividend shares on behalf of the participant under the plan, and
  - (b) the amount applied in acquiring dividend shares on behalf of the participant by the trustees of other approved SIPs that are established by the company or an associated company.
- (3) If the amounts received by the trustees exceed the limit in sub-paragraph (1), the plan must provide for the balance to be paid over to the participant as soon as practicable.

*General requirements as to dividend shares*

- 65 The plan must provide that dividend shares are to be shares—
- (a) which are in the same company and of the same class, and carry the same rights, as the shares in respect of which the dividend is paid, and
  - (b) which are not subject to any provision for forfeiture.

*Acquisition of dividend shares*

- 66 (1) The plan must provide that the trustees must treat participants fairly and equally in exercising their powers in relation to the acquisition of dividend shares.
- (2) The plan must provide for the trustees to acquire dividend shares on behalf of participants on the acquisition date.
- (3) The number of dividend shares acquired on behalf of each participant must be determined in accordance with the market value of the shares on the acquisition date.
- (4) In this paragraph “the acquisition date” means the date set by the trustees for the acquisition of dividend shares and falling not later than 30 days after the dividend is received by them.

*Holding period for dividend shares*

- 67 Paragraphs 36 and 37 (the holding period and related matters) apply in relation to dividend shares as they apply in relation to free shares, except that the holding period must be 3 years.

*Reinvestment: amounts to be carried forward*

- 68 (1) This paragraph applies where an amount is not reinvested—
- (a) because the amount of the cash dividend to which the participant is entitled is not sufficient to acquire a share, or
  - (b) because there is an amount remaining after acquiring one or more dividend shares on the participant’s behalf.
- (2) The amount may be retained by the trustees and carried forward to be added to the amount of the next cash dividend to be reinvested.
- (3) If so retained, the trustees must hold the amount so as to be separately identifiable for the purposes of sub-paragraphs (4) and (5).
- (4) An amount retained under this paragraph must be paid over to the participant—
- (a) if or to the extent that it is not reinvested within the period of 3 years beginning with the date on which the dividend was paid, or

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- (b) if during that period the participant ceases to be in relevant employment (see paragraph 95), or
  - (c) if during that period a plan termination notice is issued in respect of the plan (see paragraph 90).
- (5) An amount required to be paid over to the participant under sub-paragraph (4) must be paid over as soon as practicable.
- (6) For the purposes of this paragraph an amount carried forward under this paragraph derived from an earlier cash dividend is to be treated as reinvested before an amount derived from a later cash dividend.

*Cash dividends where no requirement to reinvest*

- 69 (1) The plan must require any distributable cash dividends in respect of plan shares held on behalf of a participant to be paid over to the participant as soon as practicable.
- (2) “Distributable cash dividends” means cash dividends which are not required to be reinvested under the plan.

**PART 9**

TRUSTEES

*Requirements etc. relating to trustees: introduction*

- 70 (1) A SIP must meet the plan requirements contained in—  
paragraph 71(1) and (2) (establishment of trustees), and  
paragraph 79 (meeting by trustees of PAYE obligations).
- (2) The following provisions also relate to the trustees—  
paragraph 71(3) to (6) (the trust instrument and classes of trustees)  
paragraph 72 (duty to act in accordance with participant’s directions),  
paragraph 73 (duty not to dispose of plan shares),  
paragraph 74 (duty to make payments to participants),  
paragraph 75 (duty to give notice of award of shares etc.),  
paragraph 76 (power to borrow),  
paragraph 77 (power to raise funds to subscribe for rights issue),  
paragraph 78 (acquisition of shares from employee share ownership trust), and  
paragraph 80 (other duties in relation to tax liabilities).

*Establishment of trustees*

- 71 (1) The plan must provide for the establishment of a body of trustees consisting of persons resident in the United Kingdom (“the trustees”).
- (2) The plan must provide that the trustees are required—
- (a) in the case of free or matching shares, to acquire shares and appropriate them to employees in accordance with the plan,
  - (b) in the case of partnership shares, to apply partnership share money in acquiring shares on behalf of employees in accordance with the plan, and

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- (c) in the case of dividend shares, to apply cash dividends in acquiring shares on behalf of participants in accordance with the plan.
- (3) The functions of the trustees with respect to shares held by them must be regulated by a trust (“the plan trust”)—
  - (a) which is constituted under the law of a part of the United Kingdom, and
  - (b) the terms of which are embodied in an instrument which complies with the requirements of this Part of this Schedule (“the trust instrument”).
- (4) The trust instrument must not contain any terms which are neither essential nor reasonably incidental to complying with the requirements of this Part of this Schedule.
- (5) The trust instrument may contain terms that—
  - (a) define who is a professional trustee and who is a non-professional trustee;
  - (b) require the trustees to include at least one person who is a professional trustee and at least two who are non-professional trustees;
  - (c) require at least half of the non-professional trustees to have been, before being appointed as trustees, selected in accordance with a specified process of selection;
  - (d) require the trustees so selected to be persons who are employees of the company or, in the case of a group plan, of a participating company.
- (6) The terms mentioned in sub-paragraph (5) are to be regarded as reasonably incidental to complying with the requirements of this Part of this Schedule for the purposes of sub-paragraph (4).

*<sup>F288</sup>Duty to monitor participants in connected schemes*

**Textual Amendments**

**F288** Sch. 2 para. 71A and cross-heading inserted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 6](#)

- 71A The trust instrument must require the trustees to maintain records of participants who have participated in one or more other approved SIPs established by the company or a connected company.]

*Duty to act in accordance with participant’s directions*

- 72 (1) The trust instrument must require the trustees—
- (a) to dispose of a participant’s plan shares, and
  - (b) to deal with any right conferred in respect of any of a participant’s plan shares to be allotted other shares, securities or rights of any description,
- only in accordance with a direction given by or on behalf of the participant.
- (2) Sub-paragraph (1) is subject to—
- (a) paragraph 73 (duty not to dispose of plan shares), and
  - (b) any provision in the plan made in accordance with paragraph 79 (meeting by trustees of PAYE obligations).
- (3) The plan may provide for participants to give such general directions, to such effect and in such terms, as are specified in the plan.



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*Duty not to dispose of plan shares*

- 73 (1) This paragraph applies to a participant's plan shares that are free, matching or dividend shares.
- (2) The trust instrument must prohibit the trustees from disposing of any of those shares (to the participant or otherwise) at any time during the holding period, unless the participant has at that time ceased to be in relevant employment.
- (3) Sub-paragraph (2) is subject to—
- (a) paragraph 37 (holding period: power to direct trustees to accept general offers etc.),
  - (b) paragraph 77 (power of trustees to raise funds to subscribe for rights issue),
  - (c) paragraph 79 (meeting by trustees of PAYE obligations), and
  - (d) paragraph 90(5) (termination of plan: early removal of shares with participant's consent).

*Duty to make payments to participants*

- 74 (1) The trust instrument must require the trustees to pay over to a participant as soon as practicable—
- (a) any money received by them in respect of, or by reference to, any of the participant's shares, or
  - (b) any money's worth so received unless it consists of new shares within the meaning of paragraph 87 (company reconstructions).
- (2) Sub-paragraph (1) is subject to—
- (a) paragraphs 62 to 69 (cash dividends and dividend shares),
  - (b) the trustees' obligations under sections 510 to 514 (PAYE: shares ceasing to be subject to plan; capital receipts), and
  - (c) the trustees' PAYE obligations.

*Duty to give notice of award of shares etc.*

- 75 (1) The trust instrument must make the following provision regarding notices.
- (2) It must provide that, as soon as practicable after any free or matching shares have been awarded to an employee, the trustees must give the employee notice of the award—
- (a) specifying the number and description of those shares,
  - (b) stating their market value on the date on which they were awarded to the employee, and
  - (c) stating the holding period applicable to them.
- (3) It must provide that, as soon as practicable after any partnership shares have been awarded to an employee, the trustees must give the employee notice of the award—
- (a) specifying the number and description of those shares,
  - (b) stating the amount of partnership share money applied by the trustees in acquiring the shares on behalf of the employee, and
  - (c) stating their market value on the acquisition date (as defined by paragraph 50(4) or, if there is an accumulation period, by paragraph 52(5)).

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- (4) It must provide that, as soon as practicable after any dividend shares have been acquired on behalf of a participant, the trustees must give the participant notice of the acquisition—
- (a) specifying the number and description of those shares,
  - (b) stating their market value on the acquisition date (as defined by paragraph 66(4)),
  - (c) stating the holding period applicable to them, and
  - (d) informing the participant of any amount carried forward under paragraph 68 (reinvestment: amounts to be carried forward).
- (5) It must provide that, where any foreign cash dividend is received in respect of plan shares held on behalf of a participant, the trustees must give the participant notice of the amount of any foreign tax deducted from the dividend before it was paid.
- (6) In sub-paragraph (5) “foreign cash dividend” means a cash dividend paid in respect of plan shares in a company not resident in the United Kingdom.

*Power of trustees to borrow*

- 76 The trust instrument may provide that the trustees have power to borrow—
- (a) to acquire shares for the purposes of the plan, and
  - (b) for such other purposes as may be specified in the trust instrument.

*Power of trustees to raise funds to subscribe for rights issue*

- 77 (1) The trustees may dispose of some of the rights arising under a rights issue in order to be able to obtain sufficient funds to exercise other such rights.
- (2) The power conferred by sub-paragraph (1) is subject to paragraph 72 (duty to act in accordance with participant’s directions).

*Acquisition by trustees of shares from employee share ownership trust*

- 78 (1) The trust instrument must provide that, where there is a qualifying transfer of shares to the trustees, the shares—
- (a) must not be awarded to participants under the plan as partnership shares, and
  - (b) must be included in any award of free or matching shares made after the date of the transfer in priority to other shares available for inclusion in that award.
- (2) For the purposes of this paragraph there is a qualifying transfer of shares to the trustees if—
- (a) relevant shares (as defined by section 69(3AC) of FA 1989) are transferred to them by the trustees of an employee share ownership trust, and
  - (b) the transfer is a qualifying transfer within section 69(3AA) of that Act (transfer of shares in, or shares purchased from money in, an employee share ownership trust immediately before 21st March 2000 [<sup>F289</sup>or, by virtue of section 142(2) of the Finance Act 2003, 27th November 2002]).

**Textual Amendments**

**F289** Words in Sch. 2 para. 78(2)(b) inserted (10.7.2003) by Finance Act 2003 (c. 14), s. 142(3)

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### *Meeting by trustees of PAYE obligations*

- 79 (1) The plan must make provision to ensure that, where a PAYE obligation is imposed on the trustees as a result of any of a participant's plan shares ceasing to be subject to the plan, the trustees are able to meet that obligation—
- (a) by disposing of any of those shares, or
  - (b) if there are any remaining plan shares of the participant, by disposing of any of those shares, or
  - (c) by the participant paying to the trustees a sum equal to the amount required to discharge the obligation.
- (2) A “PAYE obligation” includes an obligation under any of sections 510 to 512 (PAYE: shares ceasing to be subject to the plan).
- (3) For the purposes of sub-paragraph (1) any reference to the trustees disposing of shares includes a reference to their acquiring the shares as trustees for the purposes of the trust.
- (4) A disposal of any of the participant's plan shares in accordance with provision made under sub-paragraph (1)(b) may give rise to a charge to tax under—
- section 505 (charge on free or matching shares ceasing to be subject to plan),
  - section 506 (charge on partnership shares ceasing to be subject to plan), or
  - [<sup>F290</sup>Chapter 3 or 4 of Part 4 of ITTOIA 2005 (dividends etc. from UK or non-UK resident companies etc.) as a result of section 394(2) or 407(2) of that Act (distribution or dividend payment when dividend shares cease to be subject to plan).]

#### **Textual Amendments**

**F290** Words in [Sch. 2 para. 79\(4\)](#) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 617\(3\)](#) (with [Sch. 2](#))

### *Other duties of trustees in relation to tax liabilities*

- 80 (1) The trust instrument must require the trustees to maintain such records as may be necessary for the purposes of—
- (a) their own PAYE obligations, or
  - (b) the PAYE obligations of the employer company so far as they relate to the plan.
- (2) In sub-paragraph (1)—
- “PAYE obligations”, in relation to the trustees, includes obligations under sections 510 to 514 (PAYE: shares ceasing to be subject to plan and capital receipts);
  - “the employer company” has the same meaning as in section 513.
- (3) The trust instrument must require the trustees, where the participant becomes liable to income tax under—
- (a) this Act, or
  - (b) [<sup>F291</sup>Chapter 3 or 4 of Part 4 of ITTOIA 2005 (dividends etc. from UK or non-UK resident companies etc.)],

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by reason of the occurrence of any event, to inform the participant of any facts relevant to determining that liability.

- (4) Section 234A(4) to (11) of ICTA (information relating to distributions to be provided by nominee) applies in relation to—
- (a) the balance of any cash dividend paid over to the participant under paragraph 64(3),
  - (b) any amount paid over to a participant under paragraph 68(4) (dividend retained for reinvestment and later paid out), or
  - (c) any relevant dividend (see sub-paragraph (5)),
- as if it were a payment to which section 234A(4)(b) applied (and, in the case of an amount within paragraph (b) above, as if the cash dividend had been paid at the time of the payment to the participant under paragraph 68(4)).
- (5) In a case where dividend shares cease to be subject to the plan before the end of the period of 3 years beginning with the date on which they were acquired on a participant's behalf, the cash dividend applied to acquire dividend shares on the participant's behalf is a "relevant dividend" for the purposes of sub-paragraph (4)(c).

#### Textual Amendments

**F291** Words in [Sch. 2 para. 80\(3\)\(b\)](#) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 617\(4\)](#) (with [Sch. 2](#))

## PART 10

### APPROVAL OF PLANS

#### *Application for approval*

- 81 (1) Where—
- (a) a SIP has been established, and
  - (b) the company makes an application to the Inland Revenue for approval of the plan,
- the Inland Revenue must approve the plan if they are satisfied that it meets the requirements of Parts 2 to 9 of this Schedule.
- (2) An application for approval must—
- (a) be in writing, and
  - (b) contain such particulars, and be supported by such evidence, as the Inland Revenue may require.
- (3) Once the Inland Revenue have decided whether or not to approve the plan, they must give notice of their decision to the company.

#### *Appeal against refusal of approval*

- 82 (1) If the Inland Revenue refuse to approve the plan, the company may appeal to the Special Commissioners.

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- (2) The notice of appeal must be given to the Inland Revenue within 30 days after the date on which notice of their decision is given to the company.
- (3) If the Special Commissioners allow the appeal, they may direct the Inland Revenue to approve the plan with effect from a date specified by the Commissioners.
- (4) The date so specified must not be earlier than that of the application for approval.

#### *Withdrawal of approval*

- 83
- (1) This paragraph applies if a disqualifying event (see paragraph 84) occurs in relation to an approved SIP.
  - (2) The Inland Revenue may by a notice given to the company withdraw the approval with effect from—
    - (a) the time at which the disqualifying event occurred, or
    - (b) a later time specified by the Inland Revenue in the notice.
  - (3) The withdrawal of approval of a SIP does not affect the operation of the SIP code in relation to shares awarded to participants in the plan before the time with effect from which approval was withdrawn.
  - (4) References in the SIP code to an approved SIP in relation to such shares are to a plan that was approved at the time when the shares were awarded.

#### *Disqualifying events for purposes of paragraph 83*

- 84
- (1) The following are disqualifying events for the purposes of paragraph 83—
    - (a) a contravention in relation to the operation of the plan of any of the requirements of this Schedule, the plan itself or the plan trust;
    - (b) an alteration being made in a key feature of the plan, or in the terms of the plan trust, without the approval of the Inland Revenue;
    - (c) if the plan provides for performance allowances in accordance with paragraph 42 (method two), the setting of performance targets in respect of an award of shares which are not consistent targets (within the meaning given by paragraph 42(6));
    - (d) an alteration being made in the share capital of the company whose shares are the subject of the plan, or in the rights attaching to any shares of that company, that materially affects the value of participants' plan shares;
    - (e) shares of a class of which shares have been awarded to participants receiving different treatment in any respect from the other shares of that class;
    - (f) the trustees failing to furnish any information which they are required to furnish under paragraph 93 (power to require information);
    - (g) the company, or (in the case of a group plan) a company which is or has been a constituent company, failing to furnish any information which it is required to furnish under that paragraph.
  - (2) For the purposes of sub-paragraph (1)(b) the Inland Revenue may not withhold their approval unless it appears to them at the time in question that the plan as proposed to be altered would not then be approved on an application under paragraph 81.
  - (3) Sub-paragraph (1)(e) applies, in particular, to different treatment in respect of—
    - (a) the dividend payable,

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- (b) repayment,
  - (c) the restrictions attaching to the shares, or
  - (d) any offer of substituted or additional shares, securities or rights of any description in respect of the shares.
- (4) Sub-paragraph (1)(e) does not, however, apply where the difference in treatment arises—
- (a) from a key feature of the plan, or
  - (b) from any of the participants' shares being subject to any provision for forfeiture.
- (5) Nor does it apply as a result only of the fact that shares which have been newly issued receive, in respect of dividends payable with respect to a period beginning before the date on which they were issued, treatment less favourable than that accorded to shares issued before that date.
- (6) For the purposes of this paragraph a “key feature” of a plan is a provision of the plan that is necessary in order to meet the requirements of this Schedule.

*Appeal against withdrawal of approval*

- 85 (1) This paragraph applies if a SIP has been approved by the Inland Revenue and they decide—
- (a) to withdraw approval of the plan, or
  - (b) to refuse approval under paragraph 84(1)(b) (approval of alteration of plan or plan trust), or
  - (c) to give a direction under paragraph 11 of Schedule 4AA to ICTA (withdrawal of corporation tax deductions on withdrawal of approval).
- (2) The company may appeal against the decision to the Special Commissioners.
- (3) The notice of appeal must be given to the Inland Revenue within 30 days after the date on which notice of their decision is given to the company.

**PART 11**

SUPPLEMENTARY PROVISIONS

*Company reconstructions*

- 86 (1) In this Part of this Schedule a “company reconstruction” means a transaction to which this paragraph applies.
- (2) This paragraph applies to a transaction which occurs in relation to any of a participant’s plan shares (“the original holding”) and—
- (a) results in a new holding being equated with the original holding for the purposes of capital gains tax, or
  - (b) would have that result but for the fact that what would be the new holding consists of or includes a qualifying corporate bond.
- (3) But where an excluded issue of shares is made—

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- (a) that issue of shares does not by itself count as a transaction within sub-paragraph (2); and
  - (b) if made as part of a transaction within that sub-paragraph (that is, as part of a company reconstruction), the shares issued are to be regarded as not forming part of the new holding.
- (4) An “excluded issue of shares” means an issue of shares of any of the following descriptions (in respect of which a charge to income tax arises)—
- (a) redeemable shares or securities issued as mentioned in section 209(2)(c) of ICTA (distributions);
  - (b) share capital issued in circumstances such that section 210(1) of ICTA (bonus issues) applies;
  - (c) share capital to which section 249 of ICTA (stock dividends) applies [<sup>F292</sup>that is issued in a case where section 410(2) or (3) of ITTOIA 2005 applies] .

#### Textual Amendments

**F292** Words in Sch. 2 para. 86(4)(c) inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 617\(5\)](#) (with Sch. 2)

#### *Consequences of company reconstructions*

- 87 (1) In the SIP code references to a participant’s plan shares in relation to a SIP are to be read, after the time of a company reconstruction—
- (a) as referring to the new shares, or
  - (b) as including those shares,
- as the case may be.

This is subject to the following provisions of this paragraph.

- (2) For the purposes of the SIP code—
- (a) a company reconstruction is to be treated as not involving a disposal of the shares comprised in the original holding;
  - (b) new shares are to be treated as having been awarded to the participant on the date on which the corresponding old shares were awarded;
  - (c) the conditions in Part 4 of this Schedule (types of share that may be awarded) are to be treated as fulfilled with respect to any new shares if they were (or were treated as) fulfilled with respect to the corresponding old shares; and
  - (d) the provisions of—
    - (i) sections 489 to 514 (SIPs: income tax advantages and charges under this Act),
    - [<sup>F293</sup>(ii) sections 392 to 395 and 405 to 408 of ITTOIA 2005 (SIPs: special rules for charges under Chapters 3 and 4 of Part 4 of that Act (dividends etc. from UK or non-UK resident companies etc.) and section 770 of that Act (exemption for amounts applied by SIP trustees acquiring dividend shares or retained for reinvestment).]
    - (iii) sections 686B and 686C of ICTA (SIPs: income tax advantages for trustees), and
    - (iv) Part 1 of Schedule 7D to TCGA 1992 (SIPs: capital gains tax),

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apply in relation to the new shares as they would have applied in relation to the corresponding old shares.

- (3) If the corresponding old shares were dividend shares, the reference in sub-paragraph (2)(b) to the corresponding old shares being awarded is a reference to those shares being acquired on behalf of the participant.
- (4) Sub-paragraphs (1) to (3) are subject to paragraph 88 (treatment of shares acquired under rights issue).
- (5) For the purposes of the SIP code if, as part of a company reconstruction, trustees become entitled to a capital receipt, their entitlement to the capital receipt is to be taken to arise before the new holding comes into being.
- (6) In the SIP code, in the context of a new holding, “shares” includes securities and rights of any description which form part of the new holding for the purposes of Chapter 2 of Part 4 of TCGA 1992 (reorganisation of share capital etc.).
- (7) In this paragraph—
  - (a) “new shares” means shares comprised in the new holding which were issued in respect of, or otherwise represent, shares comprised in the original holding;
  - (b) “the new holding” and “the original holding” mean respectively the new and original holdings mentioned in paragraph 86(2);
  - (c) “corresponding old shares”, in relation to any new shares, means the shares in respect of which the new shares are issued or which the new shares otherwise represent.

#### Textual Amendments

**F293** Sch. 2 para. 87(2)(d)(ii) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 617\(6\)](#) (with [Sch. 2](#))

#### *Treatment of shares acquired under rights issue*

- 88
- (1) This paragraph applies for the purposes of the SIP code where the trustees exercise rights arising under a rights issue and conferred in respect of a participant’s plan shares.
  - (2) In such a case, any shares or securities or rights allotted are to be treated as if they were plan shares—
    - (a) identical to the shares in respect of which the rights were conferred, and
    - (b) appropriated to, or acquired on behalf of, the participant under the plan in the same way and at the same time as those shares.
  - (3) If, however, either of the conditions set out in sub-paragraph (4) is met, sub-paragraph (5) applies instead.
  - (4) The conditions are—
    - (a) that the funds used by the trustees to exercise the rights are not provided by the exercise of the trustees’ powers under paragraph 77 (trustees’ powers to raise funds to subscribe for rights issue);



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- (b) that similar rights are not conferred in respect of all ordinary shares in the company.
- (5) If either of those conditions is met—
- (a) any shares, securities or rights allotted are not plan shares, and
  - (b) sections 127 to 130 of TCGA 1992 (reorganisation of share capital etc.) do not apply in relation to them.

#### *Termination of plan*

- 89 (1) The plan may provide for the company to issue a plan termination notice in respect of the plan in circumstances specified in the plan.
- (2) The plan must provide that, where a plan termination notice is issued, a copy of the notice must be given, without delay, to—
- (a) the Inland Revenue,
  - (b) the trustees,
  - (c) each individual who has plan shares, and
  - (d) each individual who has entered into a partnership share agreement which was in force immediately before the notice was issued.

#### *Effect of plan termination notice*

- 90 (1) This paragraph applies if the company has issued a plan termination notice under paragraph 89.
- (2) No further shares may be awarded to individuals under the plan.
- (3) The trustees must remove the plan shares from the plan as soon as practicable after whichever is the later of—
- (a) the end of the notice period, or
  - (b) the first date on which the shares may be removed from the plan without giving rise to a charge to income tax under sections 501 to 507 (SIPs: tax charges) on the participant on whose behalf they are held.
- (4) In sub-paragraph (3) “the notice period” means the period of 3 months beginning with the date on which the requirements imposed by the plan in accordance with paragraph 89(2) are met in respect of the plan termination notice.
- (5) The trustees may remove a participant’s shares from the plan at an earlier date with the participant’s consent.
- (6) Any consent given by the participant before receiving a copy of the plan termination notice is to be disregarded for the purposes of sub-paragraph (5).
- (7) As soon as practicable after the plan termination notice is issued, the trustees must pay any money held on an individual’s behalf to the individual.
- (8) In this paragraph references to the trustees removing the plan shares from the plan are to their doing the following in the case of each participant—
- (a) transferring the shares to the participant on behalf of whom they are held, or to another person, at the participant’s direction, or

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- (b) disposing of the shares and accounting (or holding themselves ready to account) for the proceeds to the participant or to another person at the participant's direction.

- (9) Where a participant has died, the references in this paragraph to a participant are to the participant's personal representatives.

*Jointly owned companies*

- 91 (1) This paragraph applies for the purposes of the provisions of the SIP code relating to group plans.
- (2) Each joint owner of a jointly owned company is to be treated as controlling every company within sub-paragraph (3).
- (3) The companies within this sub-paragraph are—
- (a) the jointly owned company, and
  - (b) any company controlled by that company.
- (4) However, no company within sub-paragraph (3) may be—
- (a) a constituent company in more than one group plan, or
  - (b) a constituent company in a particular group plan if another company within that sub-paragraph is a constituent company in a different group plan.
- (5) In this paragraph a “jointly owned company” means a company—
- (a) of which 50% of the issued share capital is owned by one person and 50% by another, and
  - (b) which is not controlled by any one person.
- (6) This paragraph does not apply for the purposes of paragraph 27(1)(b) (requirement that plan shares are in a company not under another company's control).

*Determination of market value*

- 92 (1) For the purposes of the SIP code the “market value” of shares has the same meaning as it has for the purposes of TCGA 1992 by virtue of Part 8 of that Act.
- (2) Sub-paragraph (1) is subject to paragraph 35(3) (determination of value of shares subject to restrictions or risk of forfeiture).
- (3) Where the market value of shares on any date has to be determined for the purposes of the SIP code, the Inland Revenue and the trustees may agree that it is to be determined by reference—
- (a) to a date or dates, or
  - (b) to an average of the values on a number of dates, stated in the agreement.

*Power to require information*

- 93 (1) The Inland Revenue may by notice require a person to provide them with information—
- (a) which they reasonably require for the performance of their functions under the SIP code, and

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- (b) which the person to whom the notice is addressed has or can reasonably obtain.
- (2) The power conferred by this paragraph extends, in particular, to—
  - (a) information to enable the Inland Revenue—
    - (i) to decide whether to approve a SIP or to withdraw an approval already given, or
    - (ii) to determine the liability to tax, including capital gains tax, of any person who has participated in a plan, and
  - (b) information about the administration of a plan and any proposed alteration of the terms of a plan.
- (3) The notice must require the information to be provided within a specified period, which must not end earlier than 3 months after the date when the notice is given.

*Meaning of “associated company”*

- 94 (1) For the purposes of the SIP code one company is an “associated company” of another company at a given time if—
- (a) one has control of the other, or
  - (b) both are under the control of the same person or persons.
- (2) Sub-paragraph (1) does not, however, apply for the purposes of paragraph 29 (prohibited shares).
- (3) For the purposes of sub-paragraph (1) the question whether a person controls a company is to be determined in accordance with section 416(2) to (6) of ICTA.

*Meaning of participant ceasing to be in relevant employment*

- 95 (1) This paragraph explains what is meant, for the purposes of the SIP code, by a participant ceasing to be in relevant employment.
- (2) For the purposes of the SIP code “relevant employment” means employment by the company or any associated company.
- (3) A participant who remains in the employment of the company or any associated company does not cease to be in relevant employment.

*Meaning of shares being withdrawn from plan*

- 96 (1) For the purposes of the SIP code plan shares are withdrawn from a SIP when—
- (a) they are transferred by the trustees to the participant, or another person, on the direction of the participant,
  - (b) the participant assigns, charges or otherwise disposes of the beneficial interest in the shares, or
  - (c) they are disposed of by the trustees, on the direction of the participant, in circumstances where the trustees account (or hold themselves ready to account) for the proceeds to the participant or to another person.
- (2) Where the participant has died, the references in sub-paragraph (1) to the participant are to the participant’s personal representatives.

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*Meaning of shares ceasing to be subject to plan*

- 97 (1) For the purposes of the SIP code plan shares cease to be subject to a SIP when—
- (a) they are withdrawn from the plan,
  - (b) the participant to whom the shares were awarded ceases to be in relevant employment at a time when the shares are subject to the plan, or
  - (c) the trustees dispose of the shares under provision made in accordance with paragraph 79 (meeting by trustees of PAYE obligations).
- (2) If an individual—
- (a) participates in an award of partnership shares, and
  - (b) ceases to be in relevant employment at any time during the acquisition period relating to that award,
- the individual is to be treated for the purposes of this paragraph as ceasing to be in relevant employment immediately after the shares are awarded.
- (3) In sub-paragraph (2) “the acquisition period” in relation to an award means—
- (a) where there was no accumulation period, the period beginning with the deduction of the partnership share money and ending with the acquisition date (as defined by paragraph 50(4)), and
  - (b) where there was an accumulation period, the period beginning with the end of that period and ending immediately before the acquisition date (as defined by paragraph 52(5)).
- (4) If a participant ceases to be in relevant employment, the participant’s plan shares are to be treated as ceasing to be subject to the plan on the date of leaving.

*Meaning of “the specified retirement age”*

- 98 (1) In the SIP code, in relation to a SIP, “the specified retirement age” means the retirement age specified in the plan.
- (2) The age so specified—
- (a) must be the same for men and women, and
  - (b) must not be less than 50.

*Minor definitions*

- 99 (1) In the SIP code—
- “articles of association”, in relation to a company, includes any other written agreement between the shareholders of the company;
- “company” means a body corporate;
- “group of companies” means a company and any other companies of which it has control, and “group company” has a corresponding meaning;
- “participant’s plan shares”, in relation to a SIP, means plan shares that have been awarded to an individual participant;
- “PAYE obligations” means (subject to paragraphs 79(2) and 80(2)) obligations of any person under—
- (a) Part 11 of this Act, or
  - (b) PAYE regulations;
- “plan shares”, in relation to a SIP, means—

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- (a) free, partnership or matching shares which have been awarded to participants under the plan,
- (b) dividend shares which have been acquired on behalf of participants under the plan, and
- (c) shares in relation to which paragraph 87(1) applies (company reconstructions: new shares),

and which (in each case) remain subject to the plan;

“provision for forfeiture” means a provision to the effect that a participant ceases to be beneficially entitled to shares on the occurrence of certain events, and “forfeiture” is to be read accordingly;

“qualifying corporate bond” has the meaning given by section 117 of TCGA 1992;

“redundancy” has the same meaning as in ERA 1996 or ER(NI)O 1996;

“rights arising under a rights issue” means rights conferred in respect of a participant’s plan shares to be allotted, on payment, other shares or securities or rights of any description in the same company.

- (2) For the purposes of the SIP code references to “shares” include fractions of shares forming part of the share capital of a company registered in a foreign country the law of which recognises such fractions.
- (3) For the purposes of the SIP code a company is a member of a consortium owning another company if it is one of a number of companies—
  - (a) which between them beneficially own not less than 75% of the other company’s ordinary share capital, and
  - (b) each of which beneficially owns not less than 5% of that capital.

#### *Index of defined expressions*

100 In the SIP code the following expressions are defined or otherwise explained by the provisions indicated below:

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|   |   |
|---|---|
| accumulation period   | paragraph 51                                    |
| approval, approved  | section 488(4) (and see paragraph 83(4))        |
| articles of association   | paragraph 99(1)                                 |
| associated company  | paragraph 94 (and see paragraph 29(3))          |
| award of shares   | paragraph 5(1)                                  |
| the Board of Inland Revenue   | section 720(2)                                  |
| building society  | section 832(1) of ICTA                          |
| ceasing to be in relevant employment (in relation to a participant) | paragraph 95                                    |
| ceasing to be subject to plan (in relation to shares)               | paragraph 97                                    |
| child   | section 832(5) of ICTA (and see section 721(6)) |

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|--|---|
| close company  | section 832(1) of ICTA (and see paragraph 20(4))        |
| company  | paragraph 99(1)   |
| the company (in relation to a SIP)                   | paragraph 2(2)  |
| company reconstruction (in Part 11 of this Schedule) | paragraph 86(1)   |
| connected person                                     | section 718   |
| consortium (member of)                               | paragraph 99(3)   |
| constituent company                                  | paragraph 4(3)  |
| control  | section 719 (and see paragraphs 29(5), 37(6) and 94(3)) |
| distribution   | section 832(1) of ICTA                                  |
| dividend shares                                      | paragraph 62(3)(b)                                      |
| earnings   | section 62 and see section 721(7)                       |
| eligible shares (in Part 4 of this Schedule)         | paragraph 25(2)   |
| employee, employed, employer and employment          | section 4   |
| the employment requirement                           | paragraph 15(3)   |
| forfeiture, provision for                            | paragraph 99(1)   |
| free shares  | paragraph 2(1)(a)                                       |
| group company  | paragraph 99(1)   |
| group of companies                                   | paragraph 99(1)   |
| group plan   | paragraph 4(2)  |
| holding period                                       | paragraph 36 (and see paragraph 67)                     |
| the Inland Revenue                                   | section 720(1)  |
| market value (of shares)                             | paragraph 92  |
| matching shares                                      | paragraph 3(1)  |
| notice (except in paragraph 54 or 55)                | section 832(1) of ICTA                                  |
| ordinary share capital                               | section 832(1) of ICTA                                  |
| parent company                                       | paragraph 4(1)  |
| participant (in relation to a SIP)                   | paragraph 5(4)  |
| participant's plan shares                            | paragraph 99(1) (and see paragraph 87(1))               |
| participation in an award of shares                  | paragraph 5(3)  |
| partnership share agreement                          | paragraph 44  |
| partnership share money                              | paragraph 45(2)   |

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|  |  |
|--|--|
| partnership shares                       | paragraph 2(1)(b)  |
| PAYE deduction                           | section 488(4)   |
| PAYE obligations                         | paragraph 99(1)  |
| PAYE regulations                         | section 684(8)   |
| performance allowances                   | paragraph 34(4)  |
| personal representatives                 | section 721(1)   |
| plan requirements (in relation to a SIP) | paragraph 2(2)   |
| plan shares (in relation to a SIP)       | paragraph 99(1) (and see paragraphs 86 to 88)                          |
| the plan trust                           | paragraph 71(3)  |
| provision for forfeiture                 | paragraph 99(1)  |
| qualifying corporate bond                | paragraph 99(1)  |
| qualifying employee                      | paragraph 8(6)   |
| recognised stock exchange                | section 841 of ICTA  |
| redundancy                               | paragraph 99(1)  |
| reinvestment                             | paragraph 62(3)(a)   |
| relevant employment                      | paragraph 95(2)  |
| rights arising under a rights issue      | paragraph 99(1)  |
| salary                                   | paragraph 43(4)  |
| share incentive plan (“SIP”)             | section 488(4)   |
| shares                                   | paragraph 99(2) (and in the context of a new holding, paragraph 87(6)) |
| the SIP code                             | section 488(3)   |
| Special Commissioners                    | section 4 of TMA 1970  |
| the specified retirement age             | paragraph 98(1)  |
| tax                                      | section 832(3) of ICTA   |
| tax year                                 | section 721(1)   |
| the trustees                             | paragraphs 2(2), 71(1)   |
| the trust instrument                     | paragraph 71(3)  |
| withdrawal of shares from plan           | paragraph 96(1)  |

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## SCHEDULE 3

Section 516

### APPROVED SAYE OPTION SCHEMES

#### PART 1

##### INTRODUCTION

###### *Approval of SAYE option schemes*

- 1 (1) This Schedule makes provision for the approval of SAYE option schemes by the Inland Revenue.
- (2) Parts 2 to 7 of this Schedule contain requirements that have to be met in order for schemes to be approved under this Schedule.
- (3) The requirements consist of general requirements (see Part 2) and requirements as to—
- the eligibility of individuals to participate in a scheme (see Part 3),
  - the shares to which schemes can apply (see Part 4),
  - the existence of a linked [<sup>F294</sup>savings arrangement] (see Part 5),
  - the share options that may be granted under the scheme (see Part 6), and
  - the exchange of share options (see Part 7).
- (4) Part 8 of this Schedule deals with the approval of schemes and the withdrawal of approval.

#### **Textual Amendments**

**F294** Words in Sch. 3 para. 1(3) substituted (6.4.2005) by *Income Tax (Trading and Other Income) Act 2005* (c. 5), s. 883(1), **Sch. 1 para. 618(2)** (with Sch. 2)

###### *SAYE option schemes*

- 2 (1) In the SAYE code an “SAYE option scheme” means (in accordance with section 516(4)) a scheme established by a company which provides—
- (a) for share options to be granted to employees and directors, and
  - (b) for the shares acquired by the exercise of the share options to be paid for in the way mentioned in paragraph 24 (payments for shares to be linked to approved [<sup>F295</sup>savings arrangements] ).
- (2) In the SAYE code, in relation to an SAYE option scheme—
- “participant” means an individual who has been granted (but has not yet exercised) share options under the scheme (“the options”);
  - “participate” means obtain and exercise share options under the scheme;
  - “the scheme organiser” means the company which has established the scheme.



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### Textual Amendments

**F295** Words in [Sch. 3 para. 2\(1\)\(b\)](#) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 618\(3\)](#) (with [Sch. 2](#))

### *Group schemes*

- 3 (1) An SAYE option scheme established by a company that controls one or more other companies (a “parent scheme company”) may extend to all or any of those other companies.
- (2) In the SAYE code an SAYE option scheme established by a parent scheme company which so extends is called a “group scheme”.
- (3) In relation to a group scheme a “constituent company” means—
- (a) the parent scheme company, or
  - (b) any other company to which for the time being the scheme is expressed to extend.
- (4) Paragraph 46 deals with jointly owned companies and companies controlled by them.

## PART 2

### GENERAL REQUIREMENTS FOR APPROVAL

#### *General requirements for approval: introduction*

- 4 An SAYE option scheme must meet the requirements of—
- paragraph 5 (general restriction on contents of scheme),
  - paragraph 6 (all-employee nature of scheme),
  - paragraph 7 (participation on similar terms), and
  - paragraph 8 (no preferential treatment for directors and senior employees).

#### *General restriction on contents of scheme*

- 5 The scheme must not contain features which are neither essential nor reasonably incidental to the purpose of providing benefits for employees and directors in the nature of share options.

#### *All-employee nature of scheme*

- 6 (1) The scheme must provide that every person who meets the conditions in sub-paragraph (2) is eligible to participate in the scheme.
- (2) A person (“E”) meets the conditions in this sub-paragraph if—
- (a) E is an employee or a full-time director of the scheme organiser or (in the case of a group scheme) of a constituent company,
  - (b) E has been such an employee or director at all times during a qualifying period of not more than 5 years,

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- (c) E's earnings from the office or employment within paragraph (a) are (or would be if there were any) general earnings to which section 15 or 21 applies (earnings for year when employee resident and ordinarily resident in the UK), and
  - (d) E is not ineligible under paragraph 11 (the "no material interest" requirement).
- (3) The scheme must not contain any feature which has or is likely to have the effect of discouraging any description of persons who—
- (a) meet the conditions in sub-paragraph (2), or
  - (b) met those conditions before ceasing to be persons within sub-paragraph (2) (a),
- from actually participating in the scheme.
- (4) Sub-paragraph (3) does not apply to any provision required or authorised by a provision of this Schedule.

*Participation on similar terms*

- 7 (1) The requirements of this paragraph are—
- (a) that every person who meets the conditions in paragraph 6(2) (all-employee nature of scheme) must be eligible to participate in the scheme on similar terms, and
  - (b) that every person who participates in the scheme must actually do so on similar terms.
- (2) The requirements of this paragraph are not infringed by the fact that the rights of those participating in the scheme to obtain and exercise share options vary according to—
- (a) the levels of their remuneration,
  - (b) the length of their service, or
  - (c) any similar factors.

*No preferential treatment for directors and senior employees*

- 8 (1) The requirement of this paragraph is that, if the scheme organiser is a member of a group of companies, the scheme does not and is not likely to have the effect of conferring benefits wholly or mainly—
- (a) on directors of companies in the group, or
  - (b) on employees of companies in the group who receive the higher or highest levels of remuneration.
- (2) "A group of companies" means a company and any other companies of which it has control.

**PART 3**

ELIGIBILITY OF INDIVIDUALS TO PARTICIPATE IN SCHEME

*Requirements relating to the eligibility of individuals: introduction*

- 9 An SAYE option scheme must meet the requirements of—

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paragraph 10 (the employment requirement), and  
paragraph 11 (the “no material interest” requirement).

*The employment requirement*

- 10 (1) The scheme must ensure that an individual is not eligible to participate in the scheme at a particular time unless the individual is then a director or employee of—
- (a) the scheme organiser, or
  - (b) in the case of a group scheme, a constituent company.
- (2) The requirement of this paragraph is not infringed by a provision of the scheme required or authorised by a provision of this Schedule.

*The “no material interest” requirement*

- 11 (1) The scheme must ensure that an individual is not eligible to participate in the scheme on any date if the individual has on that date, or has had within the 12 months ending with that date, a material interest in a close company—
- (a) whose shares may be acquired as a result of exercising share options granted under the scheme, or
  - (b) which has control of a company whose shares may be acquired as a result of exercising share options granted under the scheme, or
  - (c) which is a member of a consortium which owns a company within paragraph (b).
- (2) For the purposes of this paragraph an individual is to be regarded as having a material interest in a company if—
- (a) the individual, or
  - (b) the individual together with one or more of the individual’s associates, or
  - (c) any such associate, with or without any other such associates,
- has a material interest in the company.
- (3) This paragraph is supplemented—
- (a) as regards the meaning of “material interest”, by paragraphs 12 and 13, and
  - (b) as regards the meaning of “associate”, by paragraph 14 (read with paragraphs 15 and 16).
- (4) In this paragraph and paragraph 12 “close company” includes a company that would be a close company but for—
- (a) section 414(1)(a) of ICTA (exclusion of companies not resident in the United Kingdom), or
  - (b) section 415 of ICTA (exclusion of certain quoted companies).

*Meaning of “material interest”*

- 12 (1) In paragraph 11 (the “no material interest” requirement) references to a “material interest” in a company are to—
- (a) a material interest in the share capital of the company, or
  - (b) a material interest in its assets.
- (2) A material interest in the share capital of a company means—

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- (a) beneficial ownership of, or
  - (b) the ability to control (directly or through the medium of other companies or by any other indirect means),
- more than 25% of the ordinary share capital of the company.
- (3) A material interest in the assets of a company means—
- (a) possession of, or
  - (b) an entitlement to acquire,
- such rights as would, in the event of the winding up of the company or in any other circumstances, give an entitlement to receive more than 25% of the assets that would then be available for distribution among the participators.
- (4) In this paragraph “participator” has the meaning given by section 417(1) of ICTA.
- (5) This paragraph is supplemented by paragraph 13 (material interest: options etc.).

*Material interest: options and interests in SIPs*

- 13 (1) For the purposes of paragraph 12 (meaning of “material interest”) a right to acquire shares (however arising) is to be treated as a right to control them.
- (2) Sub-paragraph (3) also applies for the purposes of paragraph 12 in a case where—
- (a) the shares to be attributed to an individual consist of or include shares which the individual or another person has a right to acquire, and
  - (b) the circumstances are such that, if that right were to be exercised, the shares acquired would be shares which were previously unissued and which the company would be contractually bound to issue in the event of the exercise of the right.
- (3) In determining at any time prior to the exercise of the right whether the number of shares to be attributed to the individual exceeds 25% of the ordinary share capital of the company, that ordinary share capital is to be treated as increased by the number of unissued shares referred to in sub-paragraph (2)(b).
- (4) The references in sub-paragraphs (2) and (3) to the shares to be attributed to an individual are to the shares which—
- (a) for the purposes of paragraph 12(2) (material interest in share capital), and
  - (b) in accordance with paragraph 11(2) (material interest can consist of or include that of individual’s associates),
- fall to be brought into account in the individual’s case so that it can be determined whether their number exceeds 25% of the company’s ordinary share capital.
- (5) In applying paragraph 12 the following are to be disregarded—
- (a) the interest of the trustees of any approved SIP (within the meaning of the SIP code: see section 488(4)) in any shares which are held by them in accordance with the plan but which have not been appropriated to, or acquired on behalf of, an individual, and
  - (b) any rights exercisable by the trustees as a result of that interest.

*Meaning of “associate”*

- 14 (1) In paragraph 11(2) (the “no material interest” requirement) “associate”, in relation to an individual, means—

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- (a) any relative or partner of that individual,
  - (b) the trustee or trustees of any settlement in relation to which that individual, or any of the individual's relatives (living or dead), is or was a settlor, or
  - (c) where that individual is interested in any shares or obligations of the company mentioned in paragraph 11(2) which are subject to any trust or are part of the estate of a deceased person—
    - (i) the trustee or trustees of the settlement concerned, or
    - (ii) the personal representatives of the deceased,as the case may be.
- (2) Sub-paragraph (1)(c) needs to be read with paragraphs 15 and 16 (which relate to employee benefit trusts and discretionary trusts).
- (3) In this paragraph—  
“relative” means—
  - (a) spouse,
  - (b) parent, child or remoter relation in the direct line, or
  - (c) brother or sister;“settlor” and “settlement” have the same meaning as in [F296Chapter 5 of Part 5 of ITTOIA 2005 (see section 620 of that Act)] .

#### Textual Amendments

**F296** Words in Sch. 3 para. 14(3) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(4\)](#) (with Sch. 2)

#### *Meaning of “associate”: trustees of employee benefit trust*

- 15 (1) This paragraph applies for the purposes of paragraph 14(1)(c) (meaning of “associate”: trustees of settlement) where the individual is interested as a beneficiary of an employee benefit trust in shares or obligations of the company mentioned in paragraph 11(2).
- (2) The trustees of the employee benefit trust are not to be regarded as associates of the individual as a result only of the individual's being so interested if neither—
  - (a) the individual, nor
  - (b) the individual together with one or more of the individual's associates, nor
  - (c) any such associate, with or without any other such associates,has at any time after 13th March 1989 been the beneficial owner of, or been able (directly or through the medium of other companies or by any other indirect means) to control, more than 25% of the ordinary share capital of the company.
- (3) In sub-paragraph (2)(b) and (c) “associate” has the meaning given by paragraph 14(1), but does not include the trustees of an employee benefit trust as a result only of the individual's having an interest in shares or obligations of the trust.
- (4) Chapter 11 of Part 7 of this Act (which deals with the attribution of interests in companies to beneficiaries of employee benefit trusts) applies for the purposes of sub-paragraph (2).

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- (5) In this paragraph “employee benefit trust” has the same meaning as in that Chapter (see sections 550 and 551).

*Meaning of “associate”: trustees of discretionary trust*

- 16 (1) This paragraph applies for the purposes of paragraph 14(1)(c) (meaning of “associate”: trustees of settlement) where—
- (a) the individual (“the beneficiary”) is one of the objects of a discretionary trust,
  - (b) the property subject to the trust has at any time consisted of, or included, shares or obligations of the company mentioned in paragraph 11(2),
  - (c) the beneficiary has ceased to be eligible to benefit under the trust as a result of—
    - (i) an irrevocable disclaimer or release executed by the beneficiary, or
    - (ii) the irrevocable exercise by the trustees of a power to exclude the beneficiary from the objects of the trust,
  - (d) immediately after the beneficiary ceased to be so eligible, no associate of the beneficiary was interested in the shares or obligations of the company that were subject to the trust, and
  - (e) during the period of 12 months ending with the date on which the beneficiary ceased to be so eligible, neither the beneficiary nor any associate of the beneficiary received any benefit under the trust.
- (2) The beneficiary is not, as a result only of the matters referred to in sub-paragraph (1) (a) and (b), to be regarded as having been interested in the shares or obligations of the company at any time during that period of 12 months.
- (3) In sub-paragraph (1) “associate” has the meaning given by paragraph 14(1) but with the omission of paragraph (c).

## PART 4

### SHARES TO WHICH SCHEMES CAN APPLY

*Requirements relating to shares that may be subject to share options: introduction*

- 17 (1) An SAYE option scheme must meet the requirements of—
- paragraph 18 (shares must be ordinary shares of certain companies),
  - paragraph 19 (requirements as to listing),
  - paragraph 20 (shares must be fully paid up and not redeemable),
  - paragraph 21 (only certain kinds of restrictions allowed), and
  - paragraph 22 (requirements as to other shareholdings).
- (2) In this Part “eligible shares” means shares which may be acquired by the exercise of share options under the scheme.

*Shares must be ordinary shares of certain companies*

- 18 Eligible shares must form part of the ordinary share capital of—
- (a) the scheme organiser,
  - (b) a company which has control of the scheme organiser, or

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- (c) a company which either is, or has control of, a company which is a member of a consortium owning either the scheme organiser or a company having control of the scheme organiser.

*Requirements as to listing*

- 19 (1) Eligible shares must be—
- (a) shares of a class listed on a recognised stock exchange,
  - (b) shares in a company which is not under the control of another company, or
  - (c) shares in a company which is under the control of a listed company.
- (2) A “listed company” is a company whose shares are listed on a recognised stock exchange, other than—
- (a) a close company, or
  - (b) a company that would be a close company if resident in the United Kingdom.

*Shares must be fully paid up and not redeemable*

- 20 Eligible shares must be—
- (a) fully paid up, and
  - (b) not redeemable.

*Only certain kinds of restriction allowed*

- 21 (1) Eligible shares must not be subject to any restrictions (see sub-paragraph (4)) other than—
- (a) those attaching to all shares of the same class, or
  - (b) those permitted by sub-paragraph (2).
- (2) If the conditions of sub-paragraph (3) are met, eligible shares may be subject to a restriction imposed by the company’s articles of association—
- (a) requiring all shares held by directors or employees—
    - (i) of the company, or
    - (ii) of any other company of which it has control,to be disposed of, or offered for sale, on ceasing to be so held, and
  - (b) requiring all shares acquired, as a result of rights or interests obtained by such directors or employees, by persons who—
    - (i) are not such directors or employees, or
    - (ii) have ceased to be such directors or employees,to be disposed of, or offered for sale, when they are acquired.
- (3) The conditions of this sub-paragraph are—
- (a) that a disposal required by the restriction will be by way of sale for a consideration in money on terms specified in the articles of association, and
  - (b) that under general conditions contained in the articles of association anyone disposing of shares of the same class (whether or not held or acquired as mentioned in sub-paragraph (2)) may be required to sell them on terms which are the same as those mentioned in paragraph (a).
- (4) For the purposes of this paragraph shares are subject to a restriction if there is any contract, agreement, arrangement or condition—

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- (a) by which a person’s freedom to dispose of the shares or of any interest in them or of the proceeds of their sale, or to exercise any right conferred by them, is restricted, or
- (b) by which such a disposal or exercise may result in any disadvantage to the person or to a person connected with the person.

This is subject to sub-paragraphs (5) and (6).

- (5) Sub-paragraph (4) does not extend 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 Code as (for the time being) set out in the listing rules issued by the competent authority for listing in the United Kingdom under section 74(4) of the Financial Services and Markets Act 2000 (c. 8).
- (6) Any discretion of the directors under the articles of association of the company to refuse to accept the transfer of shares is to be disregarded for the purposes of this paragraph if the directors—
  - (a) have undertaken to the Inland Revenue not to exercise it in such a way as to discriminate against persons participating in the scheme, and
  - (b) have notified all those who are eligible to do so of the existence of the undertaking.
- (7) In this paragraph “articles of association” includes, in the case of a company incorporated under the law of a country outside the United Kingdom, any equivalent document relating to the company.

#### *Requirements as to other shareholdings*

- 22 (1) The majority of the issued shares of the same class as the eligible shares must be—
- (a) employee-control shares, or
  - (b) open market shares,
- unless the eligible shares are shares in a company whose ordinary share capital consists of shares of one class only.
- (2) Shares in a company are “employee-control shares” if—
- (a) the persons holding the shares are, by virtue of their holding, together able to control the company, and
  - (b) those persons are or have been employees or directors of the company or of another company which is under the control of the company.
- (3) Shares in a company are “open market shares” if the persons holding the shares are not—
- (a) persons who acquired their shares as a result of a right conferred on them or an opportunity afforded to them as a director or employee of the scheme organiser or any other company, and not as a result of an offer to the public, or
  - (b) trustees holding shares on behalf of persons who acquired their beneficial interests in the shares as mentioned in paragraph (a), or
  - (c) in the case of shares which—
    - (i) are not of a class listed on a recognised stock exchange, and
    - (ii) are in a company which is under the control of a listed company (as defined by paragraph 19(2)),



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companies which have control of the company whose shares are in question or of which that company is an associated company.

## PART 5

### REQUIREMENT FOR LINKED SAVINGS [<sup>F297</sup>ARRANGEMENT]

#### Textual Amendments

**F297** Word in Sch. 3 Pt. 5 heading substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(5\)\(a\)](#) (with Sch. 2)

#### *Requirements as to linked savings [<sup>F298</sup>arrangement] : introduction*

#### Textual Amendments

**F298** Word in Sch. 3 para. 23 heading substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(5\)\(a\)](#) (with Sch. 2)

- 23 An SAYE option scheme must meet the requirements of—  
paragraph 24 (payments for shares to be linked to approved [<sup>F299</sup>savings arrangements] ), and  
paragraph 25 (requirements as to contributions to [<sup>F299</sup>savings arrangements] ).

#### Textual Amendments

**F299** Words in Sch. 3 para. 23 substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(5\)\(b\)](#) (with Sch. 2)

#### *Payments for shares to be linked to approved savings [<sup>F300</sup>arrangements]*

#### Textual Amendments

**F300** Word in Sch. 3 para. 24 heading substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(6\)\(a\)](#) (with Sch. 2)

- 24 (1) The scheme must provide for shares acquired by the exercise of share options granted under the scheme to be paid for with money not exceeding the amount of repayments made and any interest paid under a [<sup>F301</sup>certified SAYE savings arrangement] which has been approved by the Inland Revenue for the purposes of this Schedule [<sup>F302</sup>(“the approved savings arrangement”)] .

<sup>F303</sup>(2) . . . . .

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#### Textual Amendments

- F301** Words in Sch. 3 para. 24(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(6\)\(b\)](#) (with Sch. 2)
- F302** Words in Sch. 3 para. 24(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(6\)\(c\)](#) (with Sch. 2)
- F303** Sch. 3 para. 24(2) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(7\), Sch. 3](#) (with Sch. 2)

#### *Requirements as to contributions to savings [F304 arrangements]*

#### Textual Amendments

- F304** Word in Sch. 3 para. 25 heading substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(8\)\(a\)](#) (with Sch. 2)

- 25 (1) The scheme must provide for a person's contributions under the [F305 the approved savings arrangement] to be of an amount that will secure, as nearly as possible, repayment of an amount equal to the option price.
- (2) The "option price" means the amount payable, on exercising share options granted under the scheme, in order to acquire the maximum number of shares that may be acquired under them (see paragraph 28).
- (3) The scheme must neither—
- (a) permit the aggregate amount of a person's contributions under [F306 certified SAYE savings arrangements linked to approved SAYE option schemes] to exceed £250 per month, nor
  - (b) impose a minimum on the amount of a person's contributions which exceeds £10 per month.
- (4) The Treasury may by order amend sub-paragraph (3) by substituting for any amount for the time being specified there an amount specified in the order.

#### Textual Amendments

- F305** Words in Sch. 3 para. 25(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(8\)\(b\)](#) (with Sch. 2)
- F306** Words in Sch. 3 para. 25(3)(a) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(8\)\(c\)](#) (with Sch. 2)

#### *Repayments under a savings [F307 arrangement] : whether bonuses included*

#### Textual Amendments

- F307** Word in Sch. 3 para. 26 heading substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(9\)\(a\)](#) (with Sch. 2)

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- 26 (1) For the purposes of this Schedule repayments under a [<sup>F308</sup>certified SAYE savings arrangement] may be taken as including, or as not including, a bonus.
- (2) The bonus may either be the maximum bonus under that [<sup>F309</sup>arrangement] or a lesser bonus.
- (3) An SAYE option scheme must require the question whether repayments are to be taken as including bonuses to be determined at the time when share options are granted.

#### Textual Amendments

**F308** Words in Sch. 3 para. 26(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(9\)\(b\)](#) (with Sch. 2)

**F309** Word in Sch. 3 para. 26(2) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(9\)\(c\)](#) (with Sch. 2)

## PART 6

### REQUIREMENTS ETC. RELATING TO SHARE OPTIONS

#### *Requirements etc. relating to share options: introduction*

- 27 (1) An SAYE option scheme must meet the requirements of—  
paragraph 28 (requirements as to price for acquisition of shares),  
paragraph 29 (share options must not be transferable),  
paragraph 30 (time for exercising options: general),  
paragraph 31 (requirement to have a “specified age”),  
paragraph 32 (exercise of options: death),  
paragraph 33 (exercise of options: reaching specified age without retiring), and  
paragraph 34 (exercise of options: scheme-related employment ends).
- (2) An SAYE option scheme may make any provision authorised by—  
paragraph 36 (exercise of options: employment in associated company at bonus date), and  
paragraph 37 (exercise of options: company events).

#### *Requirements as to price for acquisition of shares*

- 28 (1) The price at which shares may be acquired by the exercise of a share option granted under the scheme—  
(a) must be stated at the time when the option is granted, and  
(b) must not be manifestly less than 80% of the market value of shares of the same class at that time.

This is subject to sub-paragraphs (2) and (3).

- (2) The Inland Revenue and the scheme organiser may agree in writing that sub-paragraph (1)(b) is to apply as if the reference to the time when the option is granted were to an earlier time or times stated in the agreement.

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- (3) The scheme may provide for one or more of the following—
- (a) the price at which shares may be acquired by the exercise of a share option granted under the scheme,
  - (b) the number of shares which may be so acquired, or
  - (c) the description of shares which may be so acquired,
- to be varied so far as necessary to take account of a variation in the share capital of which the shares form part.
- (4) But the scheme must provide that no such variation is to be made without the prior approval of the Inland Revenue.

*Share options must not be transferable*

- 29 (1) The scheme must ensure that share options granted to a participant are not capable of being transferred by the participant.
- (2) Paragraph 32 provides for the exercise of the options where the participant has died.

*Time for exercising options: general*

- 30 (1) The scheme must ensure that share options granted under it must not be capable of being exercised—
- (a) before the bonus date, or
  - (b) later than 6 months after that date.
- (2) However, in sub-paragraph (1)—
- (a) paragraph (a) is subject to paragraphs 32 to 34 and 37 (exercise of options in the event of death, reaching the specified age without retiring, scheme-related employment ending or certain events occurring in relation to the company), and
  - (b) paragraph (b) is subject to paragraph 32.
- (3) In the SAYE code “the bonus date” means the date on which repayments under <sup>F310</sup>the approved savings arrangement] are due.
- (4) For this purpose repayments are to be regarded as due as follows—
- (a) if the repayments are to be taken as including the maximum bonus (see paragraph 26(2)), on the earliest date on which that bonus is payable, and
  - (b) in any other case, on the earliest date on which a bonus is payable.

**Textual Amendments**

**F310** Words in Sch. 3 para. 30(3) substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), Sch. 1 para. 618(10) (with Sch. 2)

*Requirement to have a “specified age”*

- 31 (1) The scheme must specify the age that is to be the specified age for the purposes of the scheme (see paragraphs 33(1) and 34(2)).
- (2) The age specified must be—

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- (a) the same for men and women,
- (b) not less than 60, and
- (c) not more than 75.

*Exercise of options: death*

- 32 The scheme must provide that, if a participant dies before exercising the options, they may be exercised on or after the date of death but not later than—
- (a) 12 months after the date of death, in a case where the participant dies before the bonus date, or
  - (b) 12 months after the bonus date, in a case where the participant dies on or within 6 months after that date.

*Exercise of options: reaching specified age without retiring*

- 33 (1) The scheme must provide that, if a participant (“P”) continues to hold the office or employment by reference to which P satisfies the condition in paragraph 10(1) (the employment requirement) after the date on which P reaches the specified age, P may exercise the options within 6 months of that date.
- (2) This paragraph has effect subject to paragraph 30(1)(b) (options must not be capable of being exercised later than 6 months after bonus date).

*Exercise of options: scheme-related employment ends*

- 34 (1) The scheme must provide that, if a participant (“P”) no longer holds scheme-related employment (see paragraph 35), the options are exercisable as set out in sub-paragraphs (2) to (4).
- (2) In a case where P ceases to hold the scheme-related employment because of—
- (a) injury or disability or redundancy within the meaning of ERA 1996 <sup>[F311]</sup> or ER(NI)O 1996 ], or
  - (b) retirement on reaching the specified age, or any other age at which P is bound to retire in accordance with the terms of P’s contract of employment,
- the options may only be exercised within 6 months after the termination date.
- (3) In a case where P ceases to hold the scheme-related employment for any other reason, share options granted more than 3 years before the termination date either—
- (a) may not be exercised, or
  - (b) may only be exercised within 6 months after the termination date,
- according to which of these alternatives is specified in the scheme.
- (4) Subject to any provision made under sub-paragraph (5), in a case where P ceases to hold the scheme-related employment for any reason other than one within sub-paragraph (2)(a) or (b), share options granted 3 years or less before the termination date may not be exercised at all.
- (5) The scheme may <sup>[F312]</sup>make provision about the time when the options may be exercised] in a case where P ceases to hold the scheme-related employment only because—
- (a) it is in a company of which the scheme organiser ceases to have control, or

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- (b) it relates to a business or part of a business which is transferred to a person who is not an associated company of the scheme organiser.

F313  
...

[<sup>F314</sup>(5A) If the scheme makes provision by virtue of sub-paragraph (5), the provision must be either—

- (a) that the options may be exercised within 6 months after the termination date, or  
(b) that the options may be exercised within 6 months after the date (if any) when P ceases to hold the employment which (before the termination date) was the scheme-related employment for a reason within sub-paragraph (2) (a) or (b).]

(6) This paragraph has effect subject to paragraph 30(1)(b) (options must not be capable of being exercised later than 6 months after bonus date).

(7) In this paragraph—

“scheme-related employment” means the office or employment by reference to which the person satisfies the condition in paragraph 10(1) (“the employment requirement”);

“the termination date” means the date when P ceases to hold the scheme-related employment (see paragraph 35).

#### Textual Amendments

**F311** Words in Sch. 3 para. 34(2)(a) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 11\(2\)](#)

**F312** Words in Sch. 3 para. 34(5) substituted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 11\(3\)\(a\)](#)

**F313** Words in Sch. 3 para. 34(5) repealed (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 11\(3\)\(b\)](#), [Sch. 43 Pt. 3\(3\)](#)

**F314** Sch. 3 para. 34(5A) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 11\(4\)](#)

#### *Time when scheme-related employment ends*

35 (1) This paragraph applies for the purposes of paragraph 34 (exercise of options: scheme-related employment ends).

(2) Unless sub-paragraph (3) applies, a participant (“P”) is to be regarded as ceasing to hold scheme-related employment on the date when the office or employment in question terminates.

(3) If—

- (a) P’s scheme-related employment terminates, but  
(b) P continues to hold an office or employment in the scheme organiser or any associated company,

P is to be regarded as ceasing to hold the scheme-related employment on the date when P no longer holds any office or employment within paragraph (b), and not at any earlier time.

(4) For the purposes of sub-paragraph (3) one company is an “associated company” of another company if—

- (a) one has control of the other, or  
(b) both are under the control of the same person or persons;

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and for this purpose the question of whether a person controls a company is to be determined in accordance with section 416(2) to (6) of ICTA (“control” in the context of close companies).

- (5) Nothing in paragraph 34 or this paragraph applies where a person’s scheme-related employment terminates on that person’s death (see instead paragraph 32).
- (6) In this paragraph “scheme-related employment” has the same meaning as in paragraph 34.

*Exercise of options: employment in associated company at bonus date*

- 36 The scheme may provide that if at the bonus date a participant holds an office or employment in a company which is—
- (a) an associated company of the scheme organiser, but
  - (b) not a constituent company,
- the options may be exercised within 6 months after that date.

*Exercise of options: company events*

- 37 (1) The scheme may provide that share options relating to shares in a company may be exercised within 6 months after the relevant date for the purposes of sub-paragraph (2), (4) or (5).
- (2) The relevant date for the purposes of this sub-paragraph is the date when—
- (a) a person has obtained control of the company as a result of making an offer falling within sub-paragraph (3), and
  - (b) any condition subject to which the offer is made has been satisfied.
- (3) An offer falls within this sub-paragraph if it is—
- (a) a general offer to acquire the whole of the issued ordinary share capital of the company, which is made on a condition such that, if it is met, the person making the offer will have control of the company, or
  - (b) a general offer to acquire all the shares in the company which are of the same class as the shares in question obtained under the scheme.
- (4) The relevant date for the purposes of this sub-paragraph is the date when the court sanctions under—
- (a) section 425 of the Companies Act 1985 (c. 6) (power to compromise with creditors and members), or
  - (b) Article 418 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) (corresponding provision for Northern Ireland),
- a compromise or arrangement proposed for the purposes of or in connection with a scheme for the reconstruction or amalgamation of the company.
- (5) The relevant date for the purposes of this sub-paragraph is the date when the company passes a resolution for voluntary winding up.
- (6) The scheme may provide that share options relating to shares in a company may be exercised at any time when any person is bound or entitled to acquire shares in the company under—

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- (a) sections 428 to 430 of the Companies Act 1985 (c. 6) (power to acquire shares of shareholders dissenting from schemes or contract approved by majority), or
  - (b) Articles 421 to 423 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) (corresponding provision for Northern Ireland).
- (7) For the purposes of this paragraph—
- (a) “share options” means share options granted under the scheme; and
  - (b) a person is to be treated as obtaining control of a company if that person and others acting in concert together obtain control of it.
- (8) This paragraph has effect subject to paragraph 30(1)(b) (options must not be capable of being exercised later than 6 months after bonus date).

## PART 7

### EXCHANGE OF SHARE OPTIONS

#### *Exchange of options on company reorganisation*

- 38 (1) An SAYE option scheme may provide that if—
- (a) there is a company reorganisation affecting a scheme company (that is, a company whose shares may be acquired by the exercise of share options obtained under the scheme: see paragraph 18), and
  - (b) a participant has obtained share options under the scheme which are to acquire shares of the scheme company (“the old options”),
- the participant may agree with the acquiring company to release the old options in consideration of the participant being granted new share options.
- (2) For the purposes of this paragraph there is a company reorganisation affecting a scheme company if another company (“the acquiring company”)—
- (a) obtains control of the scheme company—
    - (i) as a result of making a general offer to acquire the whole of the issued ordinary share capital of the scheme company which is made on a condition such that, if it is met, the person making the offer will have control of that company, or
    - (ii) as a result of making a general offer to acquire all the shares in the scheme company which are of the same class as those subject to the old options;
  - (b) obtains control of the scheme company as a result of a compromise or arrangement sanctioned by the court under—
    - (i) section 425 of the Companies Act 1985 (power to compromise with creditors and members), or
    - (ii) Article 418 of the Companies (Northern Ireland) Order 1986 (corresponding provision for Northern Ireland); or
  - (c) becomes bound or entitled to acquire shares in the scheme company under—
    - (i) sections 428 to 430 of that Act (power to acquire shares of shareholders dissenting from schemes or contract approved by majority), or



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- (ii) Articles 421 to 423 of that Order (corresponding provision for Northern Ireland).
- (3) A scheme that makes provision under sub-paragraph (1) must require the agreement referred to in that sub-paragraph to be made—
- (a) where control is obtained in the way set out in sub-paragraph (2)(a)(i) or (ii), within the period of 6 months beginning with the time when the acquiring company obtains control and any condition subject to which the offer is made is met,
  - (b) where control is obtained in the way set out in sub-paragraph (2)(b), within the period of 6 months beginning with the time when the court sanctions the compromise or arrangement, and
  - (c) where sub-paragraph (2)(c) applies, within the period during which the acquiring company remains bound or entitled as mentioned in that provision.

*Requirements about share options granted in exchange*

- 39 (1) This paragraph applies to a scheme that makes provision under paragraph 38 (exchange of options on company reorganisation).
- (2) The scheme must require the new share options to relate to shares in a company which—
- (a) is different from the company whose shares are subject to the old options, and
  - (b) is either the acquiring company itself or some other company within sub-paragraph (b) or (c) of paragraph 18 (shares must be ordinary shares of certain companies), namely—
    - (i) a company which has control of the scheme organiser, or
    - (ii) a company which is, or has control of a company which is, a member of a consortium owning either the scheme organiser or a company having control of the scheme organiser.
- For this purpose the control in question may be through the medium of the acquiring company.
- (3) The scheme must also require the new share options to be equivalent to the old options.
- (4) For the new options to be regarded as equivalent to the old options—
- (a) the shares to which they relate must meet the conditions in paragraphs 18 to 22 (types of share that may be used),
  - (b) they must be exercisable in the same manner as the old options and subject to the provisions of the scheme as it had effect immediately before the release of the old options,
  - (c) the total market value of the shares subject to the old options immediately before the release of those options by the participant must equal the total market value, immediately after the grant of the new options to the participant, of the shares subject to those options, and
  - (d) the total amount payable by the participant for the acquisition of shares under the new options must be equal to the total amount that would have been so payable under the old options.

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- (5) For the purposes of the SAYE code, new share options granted under the terms of a provision included in a scheme under paragraph 38 are to be treated as having been granted at the time when the corresponding old options were granted.
- (6) This also applies for the purposes of the provisions of the scheme in their operation, after the grant of the new options, by virtue of a condition complying with subparagraph (4)(b).

## PART 8

### APPROVAL OF SCHEMES

#### *Application for approval*

- 40 (1) Where—
- (a) an SAYE option scheme has been established, and
  - (b) the scheme organiser makes an application to the Inland Revenue for approval of the scheme,
- the Inland Revenue must approve the scheme if they are satisfied that it meets the requirements of Parts 2 to 7 of this Schedule.
- (2) An application for approval—
- (a) must be in writing, and
  - (b) must contain such particulars and be supported by such evidence as the Inland Revenue may require.
- (3) Once the Inland Revenue have decided whether or not to approve the scheme, they must give notice of their decision to the scheme organiser.

#### *Appeal against refusal of approval*

- 41 (1) If the Inland Revenue refuse to approve the scheme, the scheme organiser may appeal to the Special Commissioners.
- (2) The notice of appeal must be given to the Inland Revenue within 30 days after the date on which notice of their decision was given to the scheme organiser.
- (3) If the Special Commissioners allow the appeal, they may direct the Inland Revenue to approve the scheme with effect from a date specified by the Commissioners.
- (4) The date so specified must not be earlier than that of the application for approval.

#### *Withdrawal of approval*

- 42 (1) If any disqualifying event occurs in connection with an approved SAYE option scheme, the Inland Revenue may by a notice given to the scheme organiser withdraw the approval with effect from—
- (a) the time at which the disqualifying event occurred, or
  - (b) a later time specified by the Inland Revenue in the notice.
- (2) A “disqualifying event” occurs in connection with a scheme if—
- (a) any of the requirements of Parts 2 to 7 of this Schedule ceases to be met;

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- [<sup>F315</sup>(aa) an alteration is made in a key feature of the scheme without the approval of the Inland Revenue;] or
- (b) the scheme organiser fails to provide information requested by the Inland Revenue under paragraph 45.
- [<sup>F316</sup>(2A) For the purposes of sub-paragraph (2)(aa) the Inland Revenue may not withhold their approval unless it appears to them at the time in question that the scheme as proposed to be altered would not then be approved on an application under paragraph 40.
- (2B) For the purposes of that sub-paragraph a “key feature” of a scheme is a provision of the scheme which is necessary in order to meet the requirements of this Schedule.]
- (3) If share options granted under an SAYE option scheme before the withdrawal of approval under this paragraph are exercised after the withdrawal, the scheme is to be treated for the purposes of—
- (a) section 519 (exemption in respect of exercise of share option), and
- [<sup>F317</sup>(b) section 421G(b) (exemption from Chapters 2 to 4 of Part 7),]
- in their application to such options, as if it were still approved at the time of the exercise.

#### Textual Amendments

**F315** Sch. 3 para. 42(2)(aa) inserted (10.7.2003) by Finance Act 2003 (c. 14), Sch. 21 para. 12(2)

**F316** Sch. 3 para. 42(2A)(2B) inserted (10.7.2003) by Finance Act 2003 (c. 14), Sch. 21 para. 12(3)

**F317** Sch. 3 para. 42(3)(b) substituted (with effect in accordance with Sch. 22 para. 44(2) of the amending Act) by Finance Act 2003 (c. 14), Sch. 22 para. 44(1)

#### *[<sup>F318</sup>Notice of decision about alteration*

#### Textual Amendments

**F318** Sch. 3 para. 43 and crossheading substituted (10.7.2003) by Finance Act 2003 (c. 14), Sch. 21 para. 12(4)

- 43 Where the Inland Revenue—
- (a) have been requested to approve any alteration in a SAYE option scheme that has been approved, and
- (b) have decided whether or not to approve the alteration,
- they must give notice of their decision to the scheme organiser.]

#### *Appeal against withdrawal of approval etc.*

- 44 (1) This paragraph applies if an SAYE option scheme has been approved by the Inland Revenue and they—
- (a) decide to withdraw approval of the scheme under paragraph 42, or
- [<sup>F319</sup>(b) decide to refuse approval under paragraph 42(2)(aa).]
- (2) The scheme organiser may appeal against the decision to the Special Commissioners.
- (3) The notice of appeal must be given to the Inland Revenue within 30 days after the date on which notice of their decision was given to the scheme organiser.

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### Textual Amendments

**F319** Sch. 3 para. 44(1)(b) substituted (10.7.2003) by Finance Act 2003 (c. 14), Sch. 21 para. 12(5)

## PART 9

### SUPPLEMENTARY PROVISIONS

#### *Power to require information*

- 45 (1) The Inland Revenue may by notice require any person to provide them with any information—
- (a) which they reasonably require for the performance of their functions under the SAYE code, and
  - (b) which the person to whom the notice is addressed has or can reasonably obtain.
- (2) The power conferred by this paragraph extends, in particular, to—
- (a) information to enable the Inland Revenue—
    - (i) to decide whether to approve an SAYE option scheme or to withdraw an approval already given, or
    - (ii) to determine the liability to tax, including capital gains tax, of any person who has participated in a scheme, and
  - (b) information about the administration of a scheme and any alteration of the terms of a scheme.
- (3) The notice must require the information to be provided within a specified time, which must not end earlier than 3 months after the date when the notice is given.

#### *Jointly owned companies*

- 46 (1) This paragraph applies for the purposes of the provisions of the SAYE code relating to group schemes.
- (2) Each joint owner of a jointly owned company is to be treated as controlling every company within sub-paragraph (3).
- (3) The companies within this sub-paragraph are—
- (a) the jointly owned company, and
  - (b) any company controlled by that company.
- (4) However, no company within sub-paragraph (3) may be—
- (a) a constituent company in more than one group scheme, or
  - (b) a constituent company in a particular group scheme if another company within that sub-paragraph is a constituent company in a different group scheme.
- (5) In this paragraph a “jointly owned company” means a company which (apart from sub-paragraph (2)) is not controlled by any one person and—
- (a) of which 50% of the issued share capital is owned by one person and 50% by another, or

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(b) which is otherwise controlled by two persons taken together.

(6) In this paragraph “joint owner” means one of the persons mentioned in sub-paragraph (5)(a) or (b).

*Meaning of “associated company”*

47 (1) For the purposes of the SAYE code, except in paragraph 35(3) (time when “scheme-related employment” ends), one company is an “associated company” of another company at a given time if, at that time or at any other time within one year previously—

- (a) one has control of the other, or
- (b) both are under the control of the same person or persons.

(2) For the purposes of sub-paragraph (1) the question whether a person controls a company is to be determined in accordance with section 416(2) to (6) of ICTA.

*Minor definitions*

48 (1) In the SAYE code—

“<sup>F320</sup>certified SAYE savings arrangement]” has the meaning given in <sup>F321</sup>section 703(1) of ITTOIA 2005] ;

“company” means a body corporate;

“market value” has the same meaning as it has for the purposes of TCGA 1992 by virtue of Part 8 of that Act.

(2) For the purposes of the SAYE code a company is a member of a consortium owning another company if it is one of a number of companies—

- (a) which between them beneficially own not less than 75% of the other company’s ordinary share capital, and
- (b) each of which beneficially owns not less than 5% of that capital.

**Textual Amendments**

**F320** Words in Sch. 3 para. 48(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(11\)\(a\)](#) (with Sch. 2)

**F321** Words in Sch. 3 para. 48(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(11\)\(b\)](#) (with Sch. 2)

*Index of defined expressions*

49 In the SAYE code the following expressions are defined or otherwise explained by the provisions indicated below:

|                    |  |
|--------------------|--|
| approved           | section 516(4) (and see paragraph 42(3)) |
| associated company | paragraph 47(1)                          |
| the bonus date     | paragraph 30(3)                          |

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|   |  |
|---|--|
| [ <sup>F322</sup> certified SAYE savings arrangement] | paragraph 48(1)  |
| child   | section 832(5) of ICTA, (and see section 721(6) of this Act) |
| close company   | section 832(1) of ICTA, (and see paragraph 11(4))            |
| company   | paragraph 48(1)  |
| connected person                                      | section 718  |
| constituent company                                   | paragraph 3(3)   |
| control   | section 719 (and see paragraphs 35(4) and 47(2))             |
| distribution  | section 832(1) of ICTA                                       |
| earnings  | section 62 and see section 721(7)                            |
| eligible shares (in Part 4 of this Schedule)          | paragraph 17(2)  |
| employee and employment                               | section 4  |
| group scheme  | paragraph 3(2) (and see paragraph 46)                        |
| the Inland Revenue                                    | section 720(1)   |
| interest  | section 832(1) of ICTA                                       |
| market value  | paragraph 48(1)  |
| member of a consortium                                | paragraph 48(2)  |
| notice  | section 832(1) of ICTA                                       |
| the options (in relation to a participant)            | paragraph 2(2)   |
| ordinary share capital                                | section 832(1) of ICTA                                       |
| participant   | paragraph 2(2)   |
| participate   | paragraph 2(2)   |
| personal representatives                              | section 721(1)   |
| recognised stock exchange                             | section 841 of ICTA  |
| the SAYE code   | section 516(3)   |
| SAYE option scheme                                    | section 516(4)   |
| the scheme organiser                                  | paragraph 2(2)   |
| share option  | section 516(4)   |
| shares  | section 516(4)   |
| Special Commissioners                                 | section 4 of TMA 1970  |
| specified age   | paragraph 31   |
| tax   | section 832(3) of ICTA                                       |
| United Kingdom  | section 830 of ICTA  |

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### Textual Amendments

**F322** Words in Sch. 3 para. 49 substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 618\(12\)](#) (with [Sch. 2](#))

## SCHEDULE 4

Section 521

### APPROVED CSOP SCHEMES

#### PART 1

##### INTRODUCTION

###### *Approval of CSOP schemes*

- 1 (1) This Schedule makes provision for the approval of CSOP schemes by the Inland Revenue.
- (2) Parts 2 to 6 of this Schedule contain requirements that have to be met in order for schemes to be approved under this Schedule.
- (3) The requirements consist of general requirements (see Part 2) and requirements as to—
- the eligibility of individuals to participate in a scheme (see Part 3),
  - the shares to which a scheme can apply (see Part 4),
  - the share options which may be granted under a scheme (see Part 5), and
  - the exchange of share options (see Part 6).
- (4) Part 7 of this Schedule deals with the approval of schemes and the withdrawal of approval.

###### *CSOP schemes*

- 2 (1) In the CSOP code a “CSOP scheme” means (in accordance with section 521(4)) a scheme which—
- (a) is established by a company,
  - (b) provides for share options to be granted to employees and directors, and
  - (c) is not an SAYE option scheme (within the meaning of the SAYE code: see section 516(4)).
- (2) In the CSOP code, in relation to a CSOP scheme—
- “participant” means an individual who has been granted (but has not yet exercised) share options under the scheme (“the options”);
  - “participate” means obtain and exercise share options under the scheme;
  - “the scheme organiser” means the company which has established the scheme.

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### *Group schemes*

- 3 (1) A CSOP scheme established by a company that controls one or more other companies (a “parent scheme company”) may extend to all or any of those other companies.
- (2) In the CSOP code a CSOP scheme established by a parent scheme company which so extends is called a “group scheme”.
- (3) In relation to a group scheme a “constituent company” means—
- (a) the parent scheme company, or
  - (b) any other company to which for the time being the scheme is expressed to extend.
- (4) Paragraph 34 deals with jointly owned companies and companies controlled by them.

## **PART 2**

### GENERAL REQUIREMENTS FOR APPROVAL

#### *General requirements for approval: introduction*

- 4 A CSOP scheme must meet the requirements of—
- paragraph 5 (general restriction on contents of scheme), and
  - paragraph 6 (limit on value of shares subject to options).

#### *General restriction on contents of scheme*

- 5 The scheme must not contain features which are neither essential nor reasonably incidental to the purpose of providing benefits for employees and directors in the nature of share options.

#### *Limit on value of shares subject to options*

- 6 (1) The scheme must provide that an individual may not be granted share options under it which would at the time when they are granted cause the aggregate market value of the shares which the individual may acquire by exercising share options granted under—
- (a) the scheme, or
  - (b) any other approved CSOP scheme established by the scheme organiser or an associated company of the scheme organiser,
- to exceed or further exceed £30,000.
- (2) For the purposes of sub-paragraph (1) share options that have already been exercised are to be left out of account.
- (3) For the purposes of sub-paragraph (1) the market value of shares is to be calculated as at—
- (a) the time when the options relating to them were granted, or
  - (b) if an agreement relating to them has been made under paragraph 22 (requirements as to price for acquisition of shares) the earlier time or times stated in the agreement.



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### PART 3

#### ELIGIBILITY OF INDIVIDUALS TO PARTICIPATE IN SCHEME

##### *Requirements relating to the eligibility of individuals: introduction*

- 7 A CSOP scheme must meet the requirements of—  
paragraph 8 (the employment requirement), and  
paragraph 9 (the “no material interest” requirement).

##### *The employment requirement*

- 8 (1) The scheme must ensure that an individual is not eligible to be granted share options under the scheme at a particular time unless the individual is then a full-time director or a qualifying employee of—  
(a) the scheme organiser, or  
(b) in the case of a group scheme, a constituent company.
- (2) A “qualifying employee”, in relation to a company, means an employee of the company other than one who is a director of—  
(a) the company, or  
(b) in the case of a group scheme, a constituent company.

##### *The “no material interest” requirement*

- 9 (1) The scheme must ensure that an individual is not eligible to participate in the scheme on any date if the individual has on that date, or has had within the 12 months preceding that date, a material interest in a close company—  
(a) whose shares may be acquired as a result of exercising share options granted under the scheme, or  
(b) which has control of a company whose shares may be acquired as a result of exercising share options granted under the scheme, or  
(c) which is a member of a consortium which owns a company within paragraph (b).
- (2) For the purposes of this paragraph an individual is to be regarded as having a material interest in a company if—  
(a) the individual, or  
(b) the individual together with one or more of the individual’s associates, or  
(c) any such associate, with or without any other such associates,  
has a material interest in the company.
- (3) This paragraph is supplemented—  
(a) as regards the meaning of “material interest”, by paragraphs 10 and 11, and  
(b) as regards the meaning of “associate”, by paragraph 12 (read with paragraphs 13 and 14).
- (4) In this paragraph and paragraph 10 “close company” includes a company that would be a close company but for—  
(a) section 414(1)(a) of ICTA (exclusion of companies not resident in the United Kingdom), or

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- (b) section 415 of ICTA (exclusion of certain quoted companies).

*Meaning of “material interest”*

- 10 (1) In paragraph 9 (the “no material interest” requirement) references to a “material interest” in a company are to—
- (a) a material interest in the share capital of the company, or
  - (b) a material interest in its assets.
- (2) A material interest in the share capital of a company means—
- (a) beneficial ownership of, or
  - (b) the ability to control (directly or through the medium of other companies or by any other indirect means),
- more than [<sup>F323</sup>25%] of the ordinary share capital of the company.
- (3) A material interest in the assets of a company means—
- (a) possession of, or
  - (b) an entitlement to acquire,
- such rights as would, in the event of the winding up of the company or in any other circumstances, give an entitlement to receive more than [<sup>F324</sup>25%] of the assets that would then be available for distribution among the participators.
- (4) In this paragraph “participator” has the meaning given by section 417(1) of ICTA.
- (5) This paragraph is supplemented by paragraph 11 (material interest: options etc.).

**Textual Amendments**

**F323** Word in [Sch. 4 para. 10\(2\)](#) substituted (with effect in accordance with Sch. 21 para. 16(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 16\(1\)](#)

**F324** Word in [Sch. 4 para. 10\(3\)](#) substituted (with effect in accordance with Sch. 21 para. 16(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 16\(1\)](#)

*Material interest: options and interests in SIPs*

- 11 (1) For the purposes of paragraph 10 (meaning of “material interest”) a right to acquire shares (however arising) is to be treated as a right to control them.
- (2) Sub-paragraph (3) also applies for the purposes of paragraph 10 in a case where—
- (a) the shares to be attributed to an individual consist of or include shares which the individual or another person has a right to acquire, and
  - (b) the circumstances are such that, if that right were to be exercised, the shares acquired would be shares which were previously unissued and which the company would be contractually bound to issue in the event of the exercise of the right.
- (3) In determining at any time prior to the exercise of the right whether the number of shares to be attributed to the individual exceeds [<sup>F325</sup>25%] of the ordinary share capital of the company, that ordinary share capital is to be treated as increased by the number of unissued shares referred to in sub-paragraph (2)(b).

*Status: Point in time view as at 07/04/2005.*

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- (4) The references in sub-paragraphs (2) and (3) to the shares to be attributed to an individual are to the shares which—
- (a) for the purposes of paragraph 10(2) (material interest in share capital), and
  - (b) in accordance with paragraph 9(2) (material interest can consist of or include that of individual’s associates),
- fall to be brought into account in the individual’s case so that it can be determined whether their number exceeds [<sup>F326</sup>25%] of the company’s ordinary share capital.
- (5) In applying paragraph 10 the following are to be disregarded—
- (a) the interest of the trustees of any approved SIP (within the meaning of the SIP code: see section 488(4)) in any shares which are held by them in accordance with the plan but which have not been appropriated to, or acquired on behalf of, an individual, and
  - (b) any rights exercisable by the trustees as a result of that interest.

#### Textual Amendments

**F325** Word in Sch. 4 para. 11(3) substituted (with effect in accordance with Sch. 21 para. 16(2) of the amending Act) by Finance Act 2003 (c. 14), Sch. 21 para. 16(1)

**F326** Word in Sch. 4 para. 11(4) substituted (with effect in accordance with Sch. 21 para. 16(2) of the amending Act) by Finance Act 2003 (c. 14), Sch. 21 para. 16(1)

#### *Meaning of “associate”*

- 12 (1) In paragraph 9(2) (the “no material interest” requirement) “associate”, in relation to an individual, means—
- (a) any relative or partner of that individual,
  - (b) the trustee or trustees of any settlement in relation to which that individual, or any of the individual’s relatives (living or dead), is or was a settlor, or
  - (c) where that individual is interested in any shares or obligations of the company mentioned in paragraph 9(2) which are subject to any trust or are part of the estate of a deceased person—
    - (i) the trustee or trustees of the settlement concerned, or
    - (ii) the personal representatives of the deceased,as the case may be.
- (2) Sub-paragraph (1)(c) needs to be read with paragraphs 13 and 14 (which relate to employee benefit trusts and discretionary trusts).
- (3) In this paragraph—
- “relative” means—
- (a) spouse,
  - (b) parent, child or remoter relation in the direct line, or
  - (c) brother or sister;
- “settlor” and “settlement” have the same meaning as in [<sup>F327</sup>Chapter 5 of Part 5 of ITTOIA 2005 (see section 620 of that Act)] .

*Status: Point in time view as at 07/04/2005.*

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### Textual Amendments

**F327** Words in [Sch. 4 para. 12\(3\)](#) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 619](#) (with [Sch. 2](#))

#### *Meaning of “associate”: trustees of employee benefit trust*

- 13 (1) This paragraph applies for the purposes of paragraph 12(1)(c) (meaning of “associate”: trustees of settlement) where the individual is interested as a beneficiary of an employee benefit trust in shares or obligations of the company mentioned in paragraph 9(2).
- (2) The trustees of the employee benefit trust are not to be regarded as associates of the individual as a result only of the individual’s being so interested if neither—
- the individual, nor
  - the individual together with one or more of the individual’s associates, nor
  - any such associate, with or without any other such associates,
- has at any time after 13th March 1989 been the beneficial owner of, or been able (directly or through the medium of other companies or by any other indirect means) to control, more than [<sup>F328</sup>25%] of the ordinary share capital of the company.
- (3) In sub-paragraph (2)(b) and (c) “associate” has the meaning given by paragraph 12(1), but does not include the trustees of an employee benefit trust as a result only of the individual’s having an interest in shares or obligations of the trust.
- (4) Chapter 11 of Part 7 of this Act (which deals with the attribution of interests in companies to beneficiaries of employee benefit trusts) applies for the purposes of sub-paragraph (2).
- (5) In this paragraph “employee benefit trust” has the same meaning as in that Chapter (see sections 550 and 551).

### Textual Amendments

**F328** Word in [Sch. 4 para. 13\(2\)](#) substituted (with effect in accordance with [Sch. 21 para. 16\(2\)](#) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 16\(1\)](#)

#### *Meaning of “associate”: trustees of discretionary trust*

- 14 (1) This paragraph applies for the purposes of paragraph 12(1)(c) (meaning of “associate”: trustees of settlement) where—
- the individual (“the beneficiary”) is one of the objects of a discretionary trust,
  - the property subject to the trust has at any time consisted of, or included, shares or obligations of the company mentioned in paragraph 9(2),
  - the beneficiary has ceased to be eligible to benefit under the trust as a result of—
    - an irrevocable disclaimer or release executed by the beneficiary, or
    - the irrevocable exercise by the trustees of a power to exclude the beneficiary from the objects of the trust,

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- (d) immediately after the beneficiary ceased to be so eligible, no associate of the beneficiary was interested in the shares or obligations of the company that were subject to the trust, and
  - (e) during the period of 12 months ending with the date on which the beneficiary ceased to be so eligible, neither the beneficiary nor any associate of the beneficiary received any benefit under the trust.
- (2) The beneficiary is not, as a result only of the matters referred to in sub-paragraph (1) (a) and (b), to be regarded as having been interested in the shares or obligations of the company at any time during that period of 12 months.
- (3) In sub-paragraph (1) “associate” has the meaning given by paragraph 12(1) but with the omission of paragraph (c).

## PART 4

### SHARES TO WHICH SCHEMES CAN APPLY

#### *Requirements relating to shares that may be subject to share options: introduction*

- 15 (1) A CSOP scheme must meet the requirements of—
- paragraph 16 (shares must be ordinary shares of certain companies),
  - paragraph 17 (requirements as to listing),
  - paragraph 18 (shares must be fully paid up and not redeemable),
  - paragraph 19 (only certain kinds of restrictions allowed), and
  - paragraph 20 (requirements as to other shareholdings).
- (2) In this Part “eligible shares” means shares which may be acquired by the exercise of share options under the scheme.

#### *Shares must be ordinary shares of certain companies*

- 16 Eligible shares must form part of the ordinary share capital of—
- (a) the scheme organiser,
  - (b) a company which has control of the scheme organiser, or
  - (c) a company which either is, or has control of, a company which is a member of a consortium owning either the scheme organiser or a company having control of the scheme organiser.

#### *Requirements as to listing*

- 17 (1) Eligible shares must be —
- (a) shares of a class listed on a recognised stock exchange,
  - (b) shares in a company which is not under the control of another company, or
  - (c) shares in a company which is under the control of a listed company.
- (2) A “listed company” is a company whose shares are listed on a recognised stock exchange, other than—
- (a) a close company, or
  - (b) a company that would be a close company if resident in the United Kingdom.

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*Shares must be fully paid up and not redeemable*

- 18 Eligible shares must be—
- (a) fully paid up, and
  - (b) not redeemable.

*Only certain kinds of restriction allowed*

- 19 (1) Eligible shares must not be subject to any restrictions (see sub-paragraph (4)) other than—
- (a) those attaching to all shares of the same class, or
  - (b) those permitted by sub-paragraph (2).
- (2) If the conditions of sub-paragraph (3) are met, eligible shares may be subject to a restriction imposed by the company's articles of association—
- (a) requiring all shares held by directors or employees—
    - (i) of the company, or
    - (ii) of any other company of which it has control,
 to be disposed of, or offered for sale, on ceasing to be so held, and
  - (b) requiring all shares acquired, as a result of rights or interests obtained by such directors or employees, by persons who—
    - (i) are not such directors or employees, or
    - (ii) have ceased to be such directors or employees,
 to be disposed of, or offered for sale, when they are acquired.
- (3) The conditions of this sub-paragraph are—
- (a) that a disposal required by the restriction will be by way of sale for a consideration in money on terms specified in the articles of association, and
  - (b) that under general conditions contained in the articles of association anyone disposing of shares of the same class (whether or not held or acquired as mentioned in sub-paragraph (2)) may be required to sell them on terms which are the same as those mentioned in paragraph (a).
- (4) For the purposes of this paragraph shares are subject to a restriction if there is any contract, agreement, arrangement or condition—
- (a) by which a person's freedom to dispose of the shares or of any interest in them or of the proceeds of their sale, or to exercise any right conferred by them, is restricted, or
  - (b) by which such a disposal or exercise may result in any disadvantage to the person or to a person connected with the person.

This is subject to sub-paragraphs (5) to (7).

- (5) Sub-paragraph (4) does not extend 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 Code as (for the time being) set out in the listing rules issued by the competent authority for listing in the United Kingdom under section 74(4) of the Financial Services and Markets Act 2000 (c. 8).
- (6) Sub-paragraph (4) also does not apply to any terms of a loan making provision about how it is to be repaid or the security to be given for it.

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- (7) Any discretion of the directors under the articles of association of the company to refuse to accept the transfer of shares is to be disregarded for the purposes of this paragraph if the directors—
- (a) have undertaken to the Inland Revenue not to exercise it in such a way as to discriminate against persons participating in the scheme, and
  - (b) have notified all those who are eligible to do so of the existence of the undertaking.
- (8) In this paragraph “articles of association” includes, in the case of a company incorporated under the law of a country outside the United Kingdom, any equivalent document relating to the company.

#### *Requirements as to other shareholdings*

- 20 (1) The majority of the issued shares of the same class as the eligible shares must be—
- (a) employee-control shares, or
  - (b) open market shares,
- unless the eligible shares are shares in a company whose ordinary share capital consists of shares of one class only.
- (2) Shares in a company are “employee-control shares” if—
- (a) the persons holding the shares are, by virtue of their holding, together able to control the company, and
  - (b) those persons are or have been employees or directors of the company or of another company which is under the control of the company.
- (3) Shares in a company are “open market shares” if the persons holding the shares are not—
- (a) persons who acquired their shares as a result of a right conferred on them or an opportunity afforded to them as a director or employee of the scheme organiser or any other company, and not as a result of an offer to the public, or
  - (b) trustees holding shares on behalf of persons who acquired their beneficial interests in the shares as mentioned in paragraph (a), or
  - (c) in the case of shares which—
    - (i) are not of a class listed on a recognised stock exchange, and
    - (ii) are in a company which is under the control of a listed company (as defined by paragraph 17(2)),companies which have control of the company whose shares are in question or of which that company is an associated company.

## **PART 5**

### REQUIREMENTS ETC. RELATING TO SHARE OPTIONS

#### *Requirements etc. relating to share options: introduction*

- 21 (1) A CSOP scheme must meet the requirements of—
- paragraph 22 (requirements as to price for acquisition of shares), and
  - paragraph 23 (share options may not be transferred).

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- (2) A CSOP scheme may make any provision authorised by—  
paragraph 24 (exercise of options: ceasing to be director or employee), or  
paragraph 25 (exercise of options: death).

*Requirements as to price for acquisition of shares*

- 22 (1) The price at which shares may be acquired by the exercise of a share option granted under the scheme—  
(a) must be stated at the time when the option is granted, and  
(b) must not be manifestly less than the market value of shares of the same class at that time.

This is subject to sub-paragraphs (2) and (3).

- (2) The Inland Revenue and the scheme organiser may agree in writing that sub-paragraph (1)(b) is to apply as if the reference to the time when the option is granted were to an earlier time or times stated in the agreement.
- (3) The scheme may provide for one or more of the following—  
(a) the price at which shares may be acquired by the exercise of a share option granted under the scheme,  
(b) the number of shares which may be so acquired, or  
(c) the description of shares which may be so acquired,  
to be varied so far as necessary to take account of a variation in the share capital of which the shares form part.
- (4) But the scheme must provide that no such variation is to be made without the prior approval of the Inland Revenue.

*Share options must not be transferable*

- 23 (1) The scheme must ensure that share options granted to a participant are not capable of being transferred by the participant.
- (2) Paragraph 25 provides for the exercise of the options where the participant has died.

*Exercise of options: ceasing to be director or employee*

- 24 (1) The scheme may provide that an individual may exercise share options under it after ceasing to be a full-time director or qualifying employee.
- (2) “Qualifying employee” has the same meaning as in paragraph 8 (the employment requirement).

*Exercise of options: death*

- 25 The scheme may provide that, if a participant dies before exercising the options, they may be exercised on or after the date of death but not later than 12 months after that date.



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## PART 6

### EXCHANGE OF SHARE OPTIONS

#### *Exchange of options on company reorganisation*

- 26 (1) A CSOP scheme may provide that if—
- (a) there is a company reorganisation affecting a scheme company (that is, a company whose shares may be acquired by the exercise of share options obtained under the scheme: see paragraph 16), and
  - (b) a participant has obtained share options under the scheme which are to acquire shares of the scheme company (“the old options”),
- the participant may agree with the acquiring company to release the old options in consideration of the participant being granted new share options.
- (2) For the purposes of this paragraph there is a company reorganisation affecting a scheme company if another company (“the acquiring company”)—
- (a) obtains control of the scheme company—
    - (i) as a result of making a general offer to acquire the whole of the issued ordinary share capital of the scheme company which is made on a condition such that, if it is met, the person making the offer will have control of that company, or
    - (ii) as a result of making a general offer to acquire all the shares in the scheme company which are of the same class as those subject to the old options;
  - (b) obtains control of the scheme company as a result of a compromise or arrangement sanctioned by the court under—
    - (i) section 425 of the Companies Act 1985 (c. 6) (power to compromise with creditors and members), or
    - (ii) Article 418 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I.6)) (corresponding provision for Northern Ireland); or
  - (c) becomes bound or entitled to acquire shares in the scheme company under—
    - (i) sections 428 to 430 of that Act (power to acquire shares of shareholders dissenting from schemes or contract approved by majority), or
    - (ii) Articles 421 to 423 of that Order (corresponding provision for Northern Ireland).
- (3) A scheme that makes provision under sub-paragraph (1) must require the agreement referred to in that sub-paragraph to be made—
- (a) where control is obtained in the way set out in sub-paragraph (2)(a)(i) or (ii), within the period of 6 months beginning with the time when the acquiring company obtains control and any condition subject to which the offer is made is met,
  - (b) where control is obtained in the way set out in sub-paragraph (2)(b), within the period of 6 months beginning with the time when the court sanctions the compromise or arrangement, and
  - (c) where sub-paragraph (2)(c) applies, within the period during which the acquiring company remains bound or entitled as mentioned in that provision.

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*Requirements about share options granted in exchange*

- 27 (1) This paragraph applies to a scheme that makes provision under paragraph 26 (exchange of options on company reorganisation).
- (2) The scheme must require the new share options to relate to shares in a company which—
- (a) is different from the company whose shares are subject to the old options, and
  - (b) is either the acquiring company itself or some other company within subparagraph (b) or (c) of paragraph 16 (shares must be ordinary shares of certain companies), namely—
    - (i) a company which has control of the scheme organiser, or
    - (ii) a company which is, or has control of a company which is, a member of a consortium owning either the scheme organiser or a company having control of the scheme organiser.

For this purpose the control in question may be through the medium of the acquiring company.
- (3) The scheme must also require the new share options to be equivalent to the old options.
- (4) For the new options to be regarded as equivalent to the old options—
- (a) the shares to which they relate must meet the conditions in paragraphs 16 to 20 (types of share that may be used),
  - (b) they must be exercisable in the same manner as the old options and subject to the provisions of the scheme as it had effect immediately before the release of the old options,
  - (c) the total market value of the shares subject to the old options immediately before the release of those options by the participant must equal the total market value, immediately after the grant of the new options to the participant, of the shares subject to those options, and
  - (d) the total amount payable by the participant for the acquisition of shares under the new options must be equal to the total amount that would have been so payable under the old options.
- (5) For the purposes of the CSOP code, new share options granted under the terms of a provision included in a scheme under paragraph 26 are to be treated as having been granted at the time when the corresponding old options were granted.
- (6) This also applies for the purposes of the provisions of the scheme in their operation, after the grant of the new options, by virtue of a condition complying with subparagraph (4)(b).

**PART 7**

APPROVAL OF SCHEMES

*Application for approval*

- 28 (1) Where—
- (a) a CSOP scheme has been established, and

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(b) the scheme organiser makes an application to the Inland Revenue for approval of the scheme,  
the Inland Revenue must approve the scheme if they are satisfied that it meets the requirements of Parts 2 to 6 of this Schedule.

- (2) An application for approval—
- (a) must be in writing, and
  - (b) must contain such particulars and be supported by such evidence as the Inland Revenue may require.
- (3) Once the Inland Revenue have decided whether or not to approve the scheme, they must give notice of their decision to the scheme organiser.

*Appeal against refusal of approval*

- 29 (1) If the Inland Revenue refuse to approve the scheme, the scheme organiser may appeal to the Special Commissioners.
- (2) The notice of appeal must be given to the Inland Revenue within 30 days after the date on which notice of their decision was given to the scheme organiser.
- (3) If the Special Commissioners allow the appeal, they may direct the Inland Revenue to approve the scheme with effect from a date specified by the Commissioners.
- (4) The date so specified must not be earlier than that of the application for approval.

*Withdrawal of approval*

- 30 (1) If any disqualifying event occurs in connection with an approved CSOP scheme, the Inland Revenue may by a notice given to the scheme organiser withdraw the approval with effect from—
- (a) the time at which the disqualifying event occurred, or
  - (b) a later time specified by the Inland Revenue in the notice.
- (2) A “disqualifying event” occurs in connection with a scheme if—
- (a) any of the requirements of Parts 2 to 6 of this Schedule ceases to be met;
  - [<sup>F329</sup>(aa) an alteration is made in a key feature of the scheme without the approval of the Inland Revenue;] or
  - (b) the scheme organiser fails to provide information requested by the Inland Revenue under paragraph 33.
- [<sup>F330</sup>(3) For the purposes of sub-paragraph (2)(aa) the Inland Revenue may not withhold their approval unless it appears to them at the time in question that the scheme as proposed to be altered would not then be approved on an application under paragraph 28.
- (4) For the purposes of that sub-paragraph a “key feature” of a scheme is a provision of the scheme which is necessary in order to meet the requirements of this Schedule.]

**Textual Amendments**

**F329** Sch. 4 para. 30(2)(aa) inserted (10.7.2003) by Finance Act 2003 (c. 14), Sch. 21 para. 17(2)

**F330** Sch. 4 para. 30(3)(4) inserted (10.7.2003) by Finance Act 2003 (c. 14), Sch. 21 para. 17(3)

*Status: Point in time view as at 07/04/2005.*

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### *[<sup>F331</sup>Notice of decision about alteration*

#### **Textual Amendments**

**F331** Sch. 4 para. 31 and crossheading substituted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 17\(4\)](#)

- 31 Where the Inland Revenue—
- (a) have been requested to approve any alteration in a CSOP scheme that has been approved, and
  - (b) have decided whether or not to approve the alteration,
- they must give notice of their decision to the scheme organiser.]

#### *Appeal against withdrawal of approval etc.*

- 32 (1) This paragraph applies if a CSOP scheme has been approved by the Inland Revenue and they—
- (a) decide to withdraw approval of the scheme under paragraph 30, or
  - <sup>F332</sup>(b) decide to refuse approval under paragraph 30(2)(aa).]
- (2) The scheme organiser may appeal against the decision to the Special Commissioners.
- (3) The notice of appeal must be given to the Inland Revenue within 30 days after the date on which notice of their decision was given to the scheme organiser.

#### **Textual Amendments**

**F332** Sch. 4 para. 32(1)(b) substituted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 17\(5\)](#)

## **PART 8**

### SUPPLEMENTARY PROVISIONS

#### *Power to require information*

- 33 (1) The Inland Revenue may by notice require any person to provide them with any information—
- (a) which they reasonably require for the performance of their functions under the CSOP code, and
  - (b) which the person to whom the notice is addressed has or can reasonably obtain.
- (2) The power conferred by this paragraph extends, in particular, to—
- (a) information to enable the Inland Revenue—
    - (i) to decide whether to approve a CSOP scheme or to withdraw an approval already given, or
    - (ii) to determine the liability to tax, including capital gains tax, of any person who has participated in a scheme, and
  - (b) information about the administration of a scheme and any alteration of the terms of a scheme.

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- (3) The notice must require the information to be provided within a specified time, which must not end earlier than 3 months after the date when the notice is given.

*Jointly owned companies*

- 34 (1) This paragraph applies for the purposes of the provisions of the CSOP code relating to group schemes.
- (2) Each joint owner of a jointly owned company is to be treated as controlling every company within sub-paragraph (3).
- (3) The companies within this sub-paragraph are—
- (a) the jointly owned company, and
  - (b) any company controlled by that company.
- (4) However, no company within sub-paragraph (3) may be—
- (a) a constituent company in more than one group scheme, or
  - (b) a constituent company in a particular group scheme if another company within that sub-paragraph is a constituent company in a different group scheme.
- (5) In this paragraph a “jointly owned company” means a company which (apart from sub-paragraph (2)) is not controlled by any one person and—
- (a) of which 50% of the issued share capital is owned by one person and 50% by another, or
  - (b) which is otherwise controlled by two persons taken together.
- (6) In this paragraph “joint owner” means one of the persons mentioned in sub-paragraph (5)(a) or (b).

*Meaning of “associated company”*

- 35 (1) For the purposes of the CSOP code one company is an “associated company” of another company at a given time if, at that time or at any other time within one year previously—
- (a) one has control of the other, or
  - (b) both are under the control of the same person or persons.
- (2) For the purposes of sub-paragraph (1) the question whether a person controls a company is to be determined in accordance with section 416(2) to (6) of ICTA.

*[<sup>F333</sup>Retirement age*

**Textual Amendments**

**F333** Sch. 4 para. 35A and cross-heading inserted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 15\(2\)](#)

- 35A A retirement age specified in a CSOP scheme—
- (a) must be the same for men and women, and
  - (b) must not be less than 55.]

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### *Minor definitions*

- 36 (1) In the CSOP code—
- “company” means a body corporate;
- “market value” has the same meaning as it has for the purposes of TCGA 1992 by virtue of Part 8 of that Act.
- (2) For the purposes of the CSOP code a company is a member of a consortium owning another company if it is one of a number of companies—
- (a) which between them beneficially own not less than 75% of the other company’s ordinary share capital, and
- (b) each of which beneficially owns not less than 5% of that capital.

### *Index of defined expressions*

- 37 In the CSOP code the following expressions are defined or otherwise explained by the provisions indicated below:

|  |  |
|--|--|
| approved                                     | section 521(4)   |
| associated company                           | paragraph 35(1)  |
| child  | section 832(5) of ICTA, (and see section 721(6) of this Act) |
| close company                                | section 832(1) of ICTA, (and see paragraph 9(4))             |
| company                                      | paragraph 36(1)  |
| connected person                             | section 718  |
| constituent company                          | paragraph 3(3)   |
| control                                      | section 719 (and see paragraph 35(2))                        |
| the CSOP code                                | section 521(3)   |
| CSOP scheme                                  | section 521(4)   |
| distribution                                 | section 832(1) of ICTA                                       |
| eligible shares (in Part 4 of this Schedule) | paragraph 15(2)  |
| employee and employment                      | section 4  |
| group scheme                                 | paragraph 3(2) (and see paragraph 34)                        |
| the Inland Revenue                           | section 720(1)   |
| market value                                 | paragraph 36(1)  |
| member of a consortium                       | paragraph 36(2)  |
| notice                                       | section 832(1) of ICTA                                       |
| the options (in relation to a participant)   | paragraph 2(2)   |
| ordinary share capital                       | section 832(1) of ICTA                                       |
| participant                                  | paragraph 2(2)   |

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|                           |                       |
|---------------------------|-----------------------|
| participate               | paragraph 2(2)        |
| personal representatives  | section 721(1)        |
| recognised stock exchange | section 841 of ICTA   |
| the scheme organiser      | paragraph 2(2)        |
| share option              | section 521(4)        |
| shares                    | section 521(4)        |
| Special Commissioners     | section 4 of TMA 1970 |
| United Kingdom            | section 830 of ICTA   |

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## SCHEDULE 5

Section 527

### ENTERPRISE MANAGEMENT INCENTIVES

#### PART 1

#### INTRODUCTION

##### *Enterprise management incentives: qualifying options*

- 1 (1) This Schedule makes provision for establishing what is a qualifying option for the purposes of the EMI code.
- (2) In the EMI code a “qualifying option” means (in accordance with section 527(4)) a share option—
- (a) in relation to which the requirements of this Schedule are met at the time when the option is granted, and
  - (b) which is notified to the Inland Revenue in accordance with Part 7.
- (3) The requirements of this Schedule are—
- (a) the general requirements in Part 2,
  - (b) that the company whose shares are the subject of the option (“the relevant company”) is a qualifying company (see Part 3),
  - (c) that the individual to whom it is granted is an eligible employee in relation to that company (see Part 4),
  - (d) that the option is granted to the employee by reason of the employee’s employment—
    - (i) with that company, or
    - (ii) if that company is a parent company, with that company or another member of the group, and
  - (e) the requirements of Part 5 as to the terms of the option, the types of shares that may be subject to it, and other matters.
- (4) In the EMI code, as it applies to a share option, “the appropriate time” means the time when the option is granted.

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*Meaning of “the relevant company” and “the employer company”*

- 2 In the EMI code, in relation to a share option—
- “the relevant company” means (in accordance with paragraph 1(3)(b)) the company whose shares are subject to the option;
  - “the employer company” means the company by reference to which the requirement in paragraph 1(3)(d) (the employment requirement) is met.

**PART 2**

GENERAL REQUIREMENTS

*General requirements: introduction*

- 3 A share option is not a qualifying option unless the requirements of this Part of this Schedule as to the following are met at the appropriate time—
- the purpose for which the option is granted (see paragraph 4),
  - the maximum entitlement of an employee (see paragraphs 5 and 6),
  - the maximum value of the relevant company’s shares in respect of which unexercised options can exist (see paragraph 7).

*Purpose of granting the option*

- 4 To be a qualifying option a share option must be granted for commercial reasons in order to recruit or retain an employee in a company, and not as part of a scheme or arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax.

*Maximum entitlement of employee: financial limit on unexercised options*

- 5 (1) An employee may not hold unexercised qualifying options which—
- (a) are in respect of shares with a total value of more than £100,000, and
  - (b) were granted by reason of the employee’s employment—
    - (i) with one company, or
    - (ii) with two or more companies which are members of the same group of companies.
- (2) A share option cannot be a qualifying option if the limit in sub-paragraph (1) is already exceeded at the time when it is granted.
- (3) If the grant of a share option causes that limit to be exceeded, the option cannot be a qualifying option so far as it relates to the excess.
- (4) Where, at the time when a share option is granted to an employee (“E”), E holds unexercised CSOP options granted by reason of E’s employment—
- (a) with the employer company, or
  - (b) if it is a member of a group of companies, with any member of that group,
- those options are to be treated for the purposes of this paragraph as if they were unexercised qualifying options.
- (5) A “CSOP option” is an option to acquire shares under a scheme approved under Schedule 4 (CSOP schemes).



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- (6) For the purposes of this paragraph—
- (a) “the value” of shares in respect of which a particular share option is or has been granted means the market value, at the time when the option is or was granted, of issued shares of the same class as those that may be acquired by exercise of the option; and
  - (b) a share option is to be treated as granted in respect of the maximum number of shares that may be acquired under it.
- [<sup>F334</sup>(7) For the purposes of this paragraph the market value of restricted shares is to be determined as if they were not.
- (8) Shares are “restricted shares” if there is any contract, agreement, arrangement or condition which makes provision to which any of subsections (2) to (4) of section 423 (restricted securities) would apply if the references in those subsections to the employment-related securities were to the shares.]

#### Textual Amendments

**F334** Sch. 5 para. 5(7)(8) substituted (1.9.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 45\(2\)\(4\); S.I. 2003/1997, art. 2](#)

#### *Maximum entitlement of employee: further limit of 3 years*

- 6 (1) Sub-paragraph (2) applies if an employee (“E”) has already been granted, by reason of E’s employment with one company, qualifying options in respect of shares with a total value of £100,000.
- (2) Any further option granted by reason of E’s employment—
- (a) with that company, or
  - (b) if it is a member of a group of companies, with any member of that group, within the 3-year restriction period cannot be a qualifying option.
- (3) Sub-paragraph (4) applies if an employee (“E”) has already been granted, by reason of E’s employment with two or more companies which are members of the same group of companies, qualifying options in respect of shares with a total value of £100,000.
- (4) Any further option granted, by reason of E’s employment with any member of that group, within the 3-year restriction period cannot be a qualifying option.
- (5) Sub-paragraph (2) or (4) applies whether or not the qualifying options already granted have been exercised or released.
- (6) In those sub-paragraphs “the 3-year restriction period” means the period of three years after the date of the grant of the last qualifying option.
- (7) Paragraph 5(6) to (8) (determination of value of shares) apply for the purposes of this paragraph as they apply for the purposes of paragraph 5.

#### *Maximum value of options in respect of relevant company’s shares*

- 7 (1) The total value of shares in the relevant company in respect of which unexercised qualifying options exist must not exceed £3 million.

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- (2) A share option cannot be a qualifying option if the limit in sub-paragraph (1) is already exceeded at the time when it is granted.
- (3) If the grant of a share option causes that limit to be exceeded, the option cannot be a qualifying option so far as it relates to the excess.
- (4) If the grant of two or more options at the same time causes that limit to be exceeded, sub-paragraph (5) applies.
- (5) For the purpose of determining which part of each option relates to the excess, the amount of the excess is to be divided pro rata among the options according to the value of the shares in respect of which each option was granted.
- (6) Paragraph 5(6) to (8) (determination of value of shares) apply for the purposes of this paragraph as they apply for the purposes of paragraph 5.

### PART 3

#### QUALIFYING COMPANIES

##### *Qualifying companies: introduction*

- 8 A “qualifying company” is a company in relation to which the requirements of this Part of this Schedule as to the following are met at the appropriate time—
- independence (see paragraph 9),
  - having only qualifying subsidiaries (see paragraphs 10 and 11),
  - [<sup>F335</sup>property managing subsidiaries (see paragraphs 11A and 11B),]
  - gross assets (see paragraph 12), and
  - trading activities (see paragraphs 13 and 14, read with paragraphs 15 to 23).

#### **Textual Amendments**

**F335** Words in Sch. 5 para. 8 inserted (with effect in accordance with s. 96(6) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 96\(2\)](#)

##### *The independence requirement*

- 9 (1) The independence requirement consists of two conditions.
- (2) The first condition is that the company is not—
- (a) a 51% subsidiary of another company, or
  - (b) a company which is under the control of—
    - (i) another company, or
    - (ii) another company and any other person connected with that other company,
 without being a 51% subsidiary of that other company.
- (3) The second condition is that no arrangements are in existence by virtue of which the company could become such a subsidiary or fall under such control.

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- (4) Arrangements with a view to a qualifying exchange of shares (see paragraph 40) do not count for the purposes of the second condition.

*The qualifying subsidiaries requirement*

- 10 (1) A company that has one or more subsidiaries is not a qualifying company unless every subsidiary of the company is a qualifying subsidiary (see paragraph 11).

[<sup>F336</sup>(2) In this paragraph “subsidiary” means any company which the company controls, either on its own or together with any person connected with it.

- (3) For the purpose of sub-paragraph (2), the question whether a person controls a company is to be determined in accordance with section 416(2) to (6) of ICTA (“control” in the context of close companies).]

**Textual Amendments**

**F336** Sch. 5 para. 10(2)(3) substituted for Sch. 5 para. 10(2) (with effect in accordance with s. 96(6) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 96\(3\)](#)

*Meaning of “qualifying subsidiary”*

- 11 (1) A company (“the subsidiary”) is a qualifying subsidiary of a company (“the holding company”) if the following conditions are met.

- (2) The conditions are—

<sup>F337</sup>(a) .....

<sup>F337</sup>(b) .....

<sup>F337</sup>(c) .....

[<sup>F338</sup>(ca) that the subsidiary is a 51% subsidiary of the holding company;]

(d) that no person other than the holding company [<sup>F339</sup>or another of its subsidiaries] has control of the subsidiary; and

(e) that no arrangements are in existence by virtue of which [<sup>F340</sup>either of the conditions in paragraphs (ca) and] (d) would cease to be met.

<sup>F341</sup>(3) .....

- (4) Sub-paragraph (5) applies at a time when the subsidiary or another company is being wound up.

- (5) The subsidiary is not to be regarded as having ceased, on account of the winding up, to be a company in relation to which the conditions in sub-paragraph (2) are met if—

(a) the conditions in that sub-paragraph would be met apart from the winding up, and

(b) the winding up is for commercial reasons and is not part of a scheme or arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax.

- (6) Sub-paragraph (7) applies at a time when arrangements are in existence for the disposal by—

(a) the holding company, or

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- (b) another subsidiary of the holding company,  
of all of its interest in the subsidiary.
- (7) The subsidiary is not to be regarded as having ceased, on account of those arrangements, to be a company in relation to which the conditions in sub-paragraph (2) are met if the disposal is to be for commercial reasons and is not to be part of a scheme or arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax.
- [<sup>F342</sup>(8) Sub-paragraph (9) applies at a time when the subsidiary or another company is in administration or receivership.
- (9) The subsidiary is not to be regarded, by reason only of anything done as a consequence of the company concerned being in administration or receivership, as having ceased to be a company in relation to which the conditions in sub-paragraph (2) are met if—
- (a) the entry into administration or receivership, and
- (b) everything done as a consequence of the company concerned being in administration or receivership,
- is for commercial reasons and is not part of a scheme or arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax.
- (10) Section 312(2A) of ICTA (meaning of being in administration or receivership) applies for the purposes of sub-paragraphs (8) and (9) as it applies for the purposes of Chapter 3 of Part 7 of ICTA (enterprise investment scheme).]

#### Textual Amendments

- F337** Sch. 5 para. 11(2)(a)-(c) repealed (with effect in accordance with s. 96(6) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 96\(4\)\(a\)](#), **Sch. 42 Pt. 2(13)**
- F338** Sch. 5 para. 11(2)(ca) inserted (with effect in accordance with s. 96(6) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 96\(4\)\(b\)](#)
- F339** Words in Sch. 5 para. 11(2)(d) inserted (with effect in accordance with s. 96(6) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 96\(4\)\(c\)](#)
- F340** Words in Sch. 5 para. 11(2)(e) substituted (with effect in accordance with s. 96(6) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 96\(4\)\(d\)](#)
- F341** Sch. 5 para. 11(3) repealed (with effect in accordance with s. 96(6) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 96\(4\)\(e\)](#), **Sch. 42 Pt. 2(13)**
- F342** Sch. 5 para. 11(8)-(10) inserted (with effect in accordance with s. 96(6) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 96\(4\)\(f\)](#)

#### [<sup>F343</sup>The property managing subsidiaries requirement

#### Textual Amendments

- F343** Sch. 5 paras. 11A, 11B and cross-headings inserted (with effect in accordance with s. 96(6) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 96\(5\)](#)

- 11A (1) A company is not a qualifying company if it has a property managing subsidiary which is not a qualifying 90% subsidiary of the company (see paragraph 11B).

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- (2) “Property managing subsidiary” means a qualifying subsidiary of a company whose business consists wholly or mainly in the holding or managing of land or any property deriving its value from land.
- (3) In sub-paragraph (2) “land” and “property deriving its value from land” have the same meaning as in section 776 of ICTA.

*Meaning of “qualifying 90% subsidiary”*

- 11B (1) A company (“the subsidiary”) is a qualifying 90% subsidiary of a company (“the holding company”) if the following conditions are met.
- (2) The conditions are—
    - (a) that the holding company possesses not less than 90% of the issued share capital of, and not less than 90% of the voting power in, the subsidiary;
    - (b) that the holding company would—
      - (i) in the event of a winding up of the subsidiary, or
      - (ii) in any other circumstances,be beneficially entitled to not less than 90% of the assets of the subsidiary which would then be available for distribution to the shareholders of the subsidiary;
    - (c) that the holding company is beneficially entitled to not less than 90% of any profits of the subsidiary which are available for distribution to the shareholders of the subsidiary;
    - (d) that no person other than the holding company has control of the subsidiary; and
    - (e) that no arrangements are in existence by virtue of which any of the conditions in paragraphs (a) to (d) would cease to be met.
  - (3) Sub-paragraphs (4) to (10) of paragraph 11 (but not sub-paragraph (6)(b)) apply in relation to the conditions in sub-paragraph (2) above as they apply in relation to the conditions in sub-paragraph (2) of that paragraph.]

*The gross assets requirement*

- 12 (1) The gross assets requirement in the case of a single company is that the value of the company’s gross assets does not exceed £30 million.
- (2) The gross assets requirement in the case of a parent company is that the value of the group assets does not exceed £30 million.
  - (3) The “value of the group assets” means the aggregate of the values of the gross assets of each of the members of the group, disregarding any that consist in rights against, or shares in or securities of, another member of the group.

*The trading activities requirement: single company*

- 13 (1) The trading activities requirement in the case of a single company is that the company—
- (a) disregarding any purposes within sub-paragraph (2), exists wholly for the purpose of carrying on one or more qualifying trades, and
  - (b) is carrying on a qualifying trade or preparing to do so.

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- (2) The purposes referred to in sub-paragraph (1)(a) are—
- (a) the holding and managing of property used by the company for one or more qualifying trades carried on by it, and
  - (b) any purposes having no significant effect (other than in relation to incidental matters) on the extent of the company’s activities.
- (3) This paragraph is supplemented by paragraph 15 (meaning of “qualifying trade”) read with paragraphs 16 to 23 (excluded activities).

*The trading activities requirement: parent company*

- 14 (1) The trading activities requirement in the case of a parent company is that—
- (a) at least one group company—
    - (i) disregarding any purposes within sub-paragraph (4), exists wholly for the purpose of carrying on one or more qualifying trades, and
    - (ii) is carrying on a qualifying trade or preparing to do so, and
  - (b) the business of the group does not consist (either wholly or as to a substantial part) in the carrying on of non-qualifying activities.
- (2) The “business of the group” means what would be the business of the group if the activities of the group companies taken together were regarded as one business.
- (3) For the purpose of determining the business of a group, activities of a group company are to be disregarded to the extent that they consist in—
- (a) the holding of shares in or securities of, or the making of loans to, another group company,
  - (b) the holding and managing of property used by a group company for the purposes of one or more qualifying trades carried on by a group company, or
  - (c) incidental activities of a company which meets the trading activities requirement for a single company (see paragraph 13).
- (4) The purposes referred to in sub-paragraph (1)(a)(i) are—
- (a) the carrying on of any activities within sub-paragraph (3), and
  - (b) any purposes having no significant effect (other than in relation to incidental matters) on the extent of the company’s activities.
- (5) In this paragraph—
- (a) “group company” means any member of the group;
  - (b) “incidental activities” means activities carried on in pursuance of purposes having no significant effect (other than in relation to incidental matters) on the extent of the company’s activities;
  - (c) “non-qualifying activities” means—
    - (i) excluded activities, or
    - (ii) activities carried on otherwise than in the course of a trade.
- (6) This paragraph is supplemented by paragraph 15 (meaning of “qualifying trade”) read with paragraphs 16 to 23 (excluded activities).

*Meaning of “qualifying trade”*

- 15 (1) A trade is a qualifying trade if—

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- (a) it is carried on wholly or mainly in the United Kingdom,
  - (b) it is conducted on a commercial basis and with a view to the realisation of profits, and
  - (c) it does not consist (either wholly or as to a substantial part) in the carrying on of excluded activities.
- (2) The carrying on of activities of research and development from which it is intended that a connected qualifying trade will be derived or benefit counts as the carrying on of a qualifying trade.
- (3) But preparing to carry on such activities does not count as preparing to carry on a qualifying trade.
- (4) In sub-paragraph (2) “connected qualifying trade” means a qualifying trade carried on—
- (a) by the company carrying on the activities of research and development, or
  - (b) if that company is a member of a group, by any other member of the group.

#### *Excluded activities*

- 16 The following are excluded activities—
- (a) dealing in land, in commodities or futures or in shares, securities or other financial instruments;
  - (b) dealing in goods otherwise than in the course of an ordinary trade of wholesale or retail distribution (see also paragraph 17);
  - (c) banking, insurance, money-lending, debt-factoring, hire-purchase financing or other financial activities;
  - (d) leasing, including letting ships on charter or other assets on hire (see also paragraph 18);
  - (e) receiving royalties or licence fees (see also paragraph 19);
  - (f) providing legal or accountancy services;
  - (g) property development (see also paragraph 20);
  - (h) farming or market gardening;
  - (i) holding, managing or occupying woodlands, any other forestry activities or timber production;
  - (j) operating or managing hotels or comparable establishments, or managing property used as a hotel or comparable establishment (see also paragraph 21);
  - (k) operating or managing nursing homes or residential care homes, or managing property used as a nursing home or residential care home (see also paragraph 22);
  - (l) any activities which are excluded activities under paragraph 23.

#### *Excluded activities: wholesale and retail distribution*

- 17 (1) This paragraph supplements paragraph 16(b).
- (2) A trade of wholesale distribution is one in which the goods are offered for sale and sold to persons—
- (a) for resale by them, or
  - (b) for processing and resale by them,

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to members of the general public for their use or consumption.

- (3) A trade of retail distribution is one in which the goods are offered for sale and sold to members of the general public for their use or consumption.
- (4) A trade is not an ordinary trade of wholesale or retail distribution if—
  - (a) it consists, to a substantial extent—
    - (i) in dealing in goods of a kind which are collected or held as an investment, or
    - (ii) in that activity and any other excluded activity taken together, and
  - (b) a substantial proportion of those goods are held by the company for a period which is significantly longer than the period for which a vendor would reasonably be expected to hold them while endeavouring to dispose of them at their market value.
- (5) In determining whether a trade carried on by any person (“P”) is an ordinary trade of wholesale or retail distribution, consideration must be given to the extent to which it has the following features—
  - (a) the goods are bought by P in quantities larger than those in which P sells them;
  - (b) the goods are bought and sold by P in different markets;
  - (c) P employs staff and incurs expenses in the trade in addition—
    - (i) to the cost of the goods, and
    - (ii) in the case of a trade carried on by a company, to any remuneration paid to any person connected with it;
  - (d) there are purchases or sales from or to persons who are connected with P;
  - (e) purchases are matched with forward sales or vice versa;
  - (f) the goods are held by P for longer than is normal for goods of the kind in question;
  - (g) the trade is carried on otherwise than at a place or places commonly used for wholesale or retail trade;
  - (h) P does not take physical possession of the goods.
- (6) The features in sub-paragraph (5)(a) to (c) are indications that the trade is such an ordinary trade.
- (7) Those in sub-paragraph (5)(d) to (h) are indications to the contrary.

*Excluded activities: leasing of certain ships*

- 18 (1) This paragraph supplements paragraph 16(d) so far as it relates to the leasing of ships other than [F<sup>344</sup>offshore installations] or pleasure craft.
- (2) In the following provisions “ship” accordingly means a ship other than an [F<sup>345</sup>offshore installation] or a pleasure craft.
- (3) If the requirements of sub-paragraph (4) are met, a trade is not to be regarded as consisting in the carrying on of excluded activities within paragraph 16(d) as a result only of its consisting in the letting of ships on charter.
- (4) The requirements of this sub-paragraph are that—



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- (a) every ship let on charter by the company carrying on the trade is beneficially owned by the company;
  - (b) every ship beneficially owned by the company is registered in the United Kingdom;
  - (c) the company is solely responsible for arranging the marketing of the services of its ships; and
  - (d) the conditions mentioned in sub-paragraph (5) are satisfied in relation to every letting of a ship on charter by the company.
- (5) The conditions are that—
- (a) the letting is for a period not exceeding 12 months and no provision is made at any time (in the charterparty or otherwise) for extending it beyond that period otherwise than at the option of the charterer;
  - (b) during the period of the letting there is no provision in force (as a result of being contained in the charterparty or otherwise) for the grant of a new letting to end, otherwise than at the option of the charterer, more than 12 months after that provision is made;
  - (c) the letting is by way of a bargain made at arm's length between the company and a person who is not connected with it;
  - (d) under the terms of the charter the company is responsible as principal—
    - (i) for taking, throughout the period of the charter, management decisions in relation to the ship, other than those of a kind generally regarded by persons engaged in trade of the kind in question as matters of husbandry, and
    - (ii) for defraying all expenses in connection with the ship throughout that period, or substantially all such expenses, other than those directly incidental to a particular voyage or to the employment of the ship during that period; and
  - (e) no arrangements exist as a result of which a person other than the company may be appointed to be responsible for the matters mentioned in paragraph (d) on behalf of the company.
- (6) If in the case of a letting by the company carrying on the trade (“the letting company”) the charterer is also a company and—
- (a) the charterer is a qualifying subsidiary of the letting company, or
  - (b) the letting company is a qualifying subsidiary of the charterer, or
  - (c) both companies are qualifying subsidiaries of a third company,
- sub-paragraph (5) has effect with the omission of paragraph (c).
- (7) Where any of the requirements in sub-paragraph (4) is not met in relation to any lettings, the trade is not, as a result, to be treated as consisting in the carrying on of excluded activities if those lettings and any other excluded activities do not, taken together, amount to a substantial part of the trade.
- (8) In this paragraph—
- F346  
.....  
“pleasure craft” means any ship of a kind primarily used for sport or recreation.

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#### Textual Amendments

- F344** Words in Sch. 5 para. 18(1) substituted (with effect in accordance with Sch. 27 para. 17(6)(7) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 27 para. 17\(2\)](#)
- F345** Words in Sch. 5 para. 18(2) substituted (with effect in accordance with Sch. 27 para. 17(6)(7) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 27 para. 17\(3\)](#)
- F346** Words in Sch. 5 para. 18(8) repealed (with effect in accordance with Sch. 27 para. 17(6)(7) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 27 para. 17\(4\)](#), [Sch. 42 Pt. 2\(19\)](#)

#### *Excluded activities: receipt of royalties or licence fees*

- 19 (1) This paragraph supplements paragraph 16(e) (receipt of royalties or licence fees).
- (2) If the requirement of sub-paragraph (3) is met, a trade is not to be regarded as consisting in the carrying of excluded activities within paragraph 16(e) as a result only of its consisting to a substantial extent in the receiving of royalties or licence fees.
- (3) The requirement of this sub-paragraph is that the royalties or licence fees (or all of them except for a part that is not substantial in terms of value) are attributable to the exploitation of relevant intangible assets.
- (4) For this purpose a “relevant intangible asset” is an intangible asset the whole or greater part of which (in terms of value) has been created—
- (a) by the company carrying on the trade, or
  - (b) by a company which, for the whole of the period during which it created the asset, was—
    - (i) the parent company of the company carrying on the trade, or
    - (ii) a qualifying subsidiary of that parent company.
- (5) In the case of an intangible asset which is intellectual property, any reference in sub-paragraph (4) to the creation of the asset by a company is to its creation in circumstances in which the right to exploit it vests in the company (either alone or jointly with others).
- (6) In sub-paragraph (5) “intellectual property” means—
- (a) any patent, trade mark, registered design, copyright, design right, performer’s right or plant breeder’s right; or
  - (b) any rights under the law of a country or territory outside the United Kingdom which correspond or are similar to those falling within paragraph (a).
- (7) In this paragraph “intangible asset” means any asset which falls to be treated as an intangible asset in accordance with generally accepted accounting practice.

#### *Excluded activities: property development*

- 20 (1) This paragraph supplements paragraph 16(g).
- (2) “Property development” means the development of land—
- (a) by a company which has, or at any time has had, an interest in the land, and
  - (b) with the sole or main object of realising a gain from the disposal of an interest in the land when it is developed.

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- (3) For this purpose “interest in land” means—
- (a) any estate, interest or right in or over land, including any right affecting the use or disposition of land, or
  - (b) any right to obtain such an estate, interest or right from another which is conditional on the other’s ability to grant it.
- (4) References in this paragraph to an interest in land do not, however, include—
- (a) the interest of a creditor (other than a creditor in respect of a rentcharge) whose debt is secured by way of mortgage, an agreement for a mortgage or a charge of any kind over land, or
  - (b) in the case of land in Scotland, the interest of a creditor in a charge or security of any kind over land.

*Excluded activities: hotels and comparable establishments*

- 21 (1) This paragraph supplements paragraph 16(j).
- (2) A “comparable establishment” means a guest house, hostel or other establishment offering overnight accommodation.
- (3) An establishment offers overnight accommodation if the main purpose of maintaining it is the provision of facilities for such accommodation (with or without catering services).
- (4) The activities of a person are not to be taken to fall within paragraph 16(j) unless that person has an estate or interest in, or is in occupation of, the hotel or comparable establishment in question.

*Excluded activities: nursing homes and residential care homes*

- 22 (1) This paragraph supplements paragraph 16(k).
- (2) “Nursing home” means an establishment that exists wholly or mainly for the provision of nursing care—
- (a) for persons suffering from sickness, injury or infirmity, or
  - (b) for women who are pregnant or have given birth to children.
- (3) “Residential care home” means an establishment that exists wholly or mainly for the provision of residential accommodation, together with board and personal care, for persons in need of personal care by reason of—
- (a) old age,
  - (b) mental or physical disability,
  - (c) past or present dependence on alcohol or drugs,
  - (d) any past illness, or
  - (e) past or present mental disorder.
- (4) The activities of a person are not to be taken to fall within paragraph 16(k) unless that person has an estate or interest in, or is in occupation of, the nursing home or residential care home in question.

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*Excluded activities: provision of facilities for another business*

- 23 (1) This paragraph applies where a company (“the service provider”) provides services or facilities for a business carried on by another person.
- (2) Providing those services or facilities is an excluded activity if—
- (a) the business consists to a substantial extent in carrying on excluded activities within any of sub-paragraphs (a) to (k) of paragraph 16, and
  - (b) a controlling interest in the business is held by a person (other than a company of which the service provider is a subsidiary) who also has a controlling interest in the business carried on by the service provider.
- (3) Sub-paragraphs (4) to (6) explain what is meant by a controlling interest in a business for the purposes of sub-paragraph (2)(b).
- (4) In the case of a business carried on by a company, a person (“P”) has a controlling interest in the business if—
- (a) P controls the company,
  - (b) the company is a close company and P, or an associate of P's, is a director of the company and either—
    - (i) is the beneficial owner of more than 30% of the ordinary share capital of the company, or
    - (ii) is able (directly or through the medium of other companies or by any other indirect means) to control more than 30% of that share capital, or
  - (c) not less than half of the business could, in accordance with section 344(2) of ICTA (company reconstructions: supplemental), be regarded as belonging to him for the purposes of section 343 of that Act (company reconstructions without a change of ownership).
- (5) In any other case, a person has a controlling interest in a business if that person is entitled to not less than half—
- (a) of the assets used for the business, or
  - (b) of the income arising from it.
- (6) For the purposes of sub-paragraph (4)(a) the question whether a person controls a company is to be determined in accordance with section 416(2) to (6) of ICTA (“control” in the context of close companies).
- (7) For the purposes of this paragraph any rights or powers of a person who is an associate of another person are to be attributed to that other person.
- (8) In this paragraph—
- “associate” has the meaning given in section 417(3) and (4) of ICTA (expressions relating to close companies), except that in those subsections as they apply for the purposes of this paragraph “relative” does not include a brother or sister;
  - “business” includes any trade, profession or vocation;
  - “director” is to be construed in accordance with section 417(5) of ICTA (expressions relating to close companies).

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## PART 4

### ELIGIBLE EMPLOYEES

#### *Eligible employees: introduction*

- 24 An individual is an “eligible employee” in relation to the relevant company if the requirements of this Part of this Schedule as to the following are met at the appropriate time—
- employment (see paragraph 25),
  - commitment of working time (see paragraphs 26 and 27), and
  - having no material interest (see paragraphs 28 to 33).

#### *The employment requirement*

- 25 To be an eligible employee in relation to the relevant company an individual must be an employee—
- (a) of that company, or
  - (b) if that company is a parent company, of that company or a qualifying subsidiary of that company.

#### *The requirement as to commitment of working time*

- 26 (1) For an individual (“the employee”) to be an eligible employee in relation to the relevant company the average amount per week of the employee’s committed time must equal or exceed the statutory threshold, that is—
- (a) 25 hours a week, or
  - (b) if less, 75% of the employee’s working time (see paragraph 27).
- (2) The employee’s “committed time” means the time that the employee is required, as an employee in relevant employment, to spend—
- (a) on the business of the relevant company, or
  - (b) if the relevant company is a parent company, on the business of the group.
- (3) It includes any time which the employee would have been required to spend as mentioned in sub-paragraph (2) but for—
- (a) injury, ill-health or disability,
  - (b) pregnancy, childbirth, maternity or paternity leave or parental leave,
  - (c) reasonable holiday entitlement, or
  - (d) not being required to work during a period of notice of termination of employment.
- (4) In this paragraph “relevant employment” means employment—
- (a) by the relevant company, or
  - (b) where the relevant company is a parent company, by any member of the group.

#### *Meaning of “working time”*

- 27 (1) In paragraph 26 “working time” means—
- (a) time spent on remunerative work as an employee or self-employed person, or

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- (b) time which would have been so spent but for any of the reasons set out in paragraph 26(3)(a) to (d).
- (2) In sub-paragraph (1)(a) “remunerative work”, in the context of work undertaken as an employee, means work the earnings from which—
  - (a) are general earnings to which section 15 or 21 applies (earnings for year when employee resident or ordinarily resident in the United Kingdom), or
  - (b) would be general earnings within paragraph (a) if the employee were resident and ordinarily resident in the United Kingdom.
- (3) In sub-paragraph (1)(a) “remunerative work”, in the context of work undertaken as a self-employed person, means work which is undertaken with a view to profit and the profits (if any) from which—
  - (a) are (or would be) chargeable to tax <sup>F347</sup>as the profits of a trade, profession or vocation carried on wholly or partly in the United Kingdom] , or
  - (b) would be so chargeable if the employee were resident and ordinarily resident in the United Kingdom.

#### Textual Amendments

**F347** Words in [Sch. 5 para. 27\(3\)\(a\)](#) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 620\(2\)](#) (with [Sch. 2](#))

#### *The “no material interest” requirement*

- 28 (1) An individual is not an eligible employee in relation to the relevant company if the individual has a material interest—
- (a) in that company, or
  - (b) if that company is a parent company, in any member of the group.
- (2) For the purposes of this paragraph an individual is to be regarded as having a material interest in a company if—
- (a) the individual,
  - (b) the individual together with one or more of the individual’s associates, or
  - (c) any such associate, with or without any other such associates,
- has a material interest in the company.
- (3) This paragraph is supplemented—
- (a) as regards the meaning of “material interest”, by paragraphs 29 and 30; and
  - (b) as regards the meaning of “associate” by paragraph 31 (read with paragraphs 32 and 33).

#### *Meaning of “material interest”*

- 29 (1) In paragraph 28 (the “no material interest” requirement) references to a “material interest” in a company are to—
- (a) a material interest in the share capital of the company, or
  - (b) where it is a close company, a material interest in its assets.
- (2) A material interest in the share capital of a company means—
- (a) beneficial ownership of, or

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- (b) the ability to control (directly or through the medium of other companies or by any other indirect means),  
more than 30% of the ordinary share capital of the company.
- (3) A material interest in the assets of a close company means—
  - (a) possession of, or
  - (b) an entitlement to acquire,such rights as would, in the event of the winding up of the company or in any other circumstances, give an entitlement to receive more than 30% of the assets that would then be available for distribution among the participators.
- (4) In this paragraph—
  - “close company” includes a company that would be a close company but for—
    - (a) section 414(1)(a) of ICTA (exclusion of companies not resident in the United Kingdom), or
    - (b) section 415 of ICTA (exclusion of certain quoted companies);
  - “participator” has the meaning given by section 417(1) of ICTA (expressions relating to close companies).
- (5) This paragraph is supplemented by paragraph 30 (options and interests in SIPs).

*Material interest: options and interests in SIPs*

- 30
- (1) This paragraph applies for the purposes of paragraph 29 (meaning of “material interest”).
  - (2) A right to acquire shares (however arising) is to be treated as a right to control them.
  - (3) However, shares that an individual may acquire under a qualifying option are to be left out of account until such time as they are actually acquired.
  - (4) Sub-paragraph (5) applies in a case where—
    - (a) the shares to be attributed to an individual consist of or include shares which the individual or another person has a right to acquire, and
    - (b) the circumstances are such that, if that right were to be exercised, the shares acquired would be shares which were previously unissued and which the company would be contractually bound to issue in the event of the exercise of the right.
  - (5) In determining at any time prior to the exercise of the right whether the number of shares to be attributed to the individual exceeds 30% of the ordinary share capital of the company, that ordinary share capital is to be treated as increased by the number of unissued shares referred to in sub-paragraph (4)(b).
  - (6) The references in sub-paragraphs (4) and (5) to the shares to be attributed to an individual are to the shares which—
    - (a) for the purposes of paragraph 29(2) (material interest in share capital), and
    - (b) in accordance with paragraph 28(2) (material interest can consist of or include that of individual’s associates),fall to be brought into account in the individual’s case so that it can be determined whether their number exceeds 30% of the company’s ordinary share capital.

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- (7) In applying paragraph 29 the following are to be disregarded—
- (a) the interest of the trustees of any share incentive plan approved under Schedule 2 (SIPs) in any shares which are held by them in accordance with the plan but which have not been appropriated to, or acquired on behalf of, an individual, and
  - (b) any rights exercisable by the trustees as a result of that interest.

*Meaning of “associate”*

- 31 (1) In paragraph 28(2) (the “no material interest” requirement) “associate”, in relation to an individual, means—
- (a) any relative or partner of that individual,
  - (b) the trustee or trustees of any settlement in relation to which that individual, or any of that individual’s relatives (living or dead), is or was a settlor, and
  - (c) where that individual is interested in any shares or obligations of the company mentioned in paragraph 28(2) which are subject to any trust, or are part of the estate of a deceased person—
    - (i) the trustee or trustees of the settlement concerned, or
    - (ii) the personal representatives of the deceased,
 as the case may be.
- (2) Sub-paragraph (1)(c) needs to be read with paragraphs 32 and 33 (which relate to employee benefit trusts and discretionary trusts).
- (3) In this paragraph—
- “relative” means—
- (a) spouse, or
  - (b) parent, child or remoter relation in the direct line;
- “settlor” and “settlement” have the same meaning as in <sup>F348</sup>Chapter 5 of Part 5 of ITTOIA 2005 (see section 620 of that Act) .

**Textual Amendments**

**F348** Words in [Sch. 5 para. 31\(3\)](#) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 620\(3\)](#) (with [Sch. 2](#))

*Meaning of “associate”: trustees of employee benefit trust*

- 32 (1) This paragraph applies for the purposes of paragraph 31(1)(c) (meaning of “associate”: trustees of settlement) where the individual is interested as a beneficiary of an employee benefit trust in shares or obligations of the company mentioned in paragraph 28(2).
- (2) The trustees of the employee benefit trust are not to be regarded as associates of the beneficiary by reason only of the individual’s being so interested if neither—
- (a) the individual, nor
  - (b) the individual together with one or more of the individual’s associates, nor
  - (c) any such associate, with or without any other such associates,



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has at any time after 13th March 1989 been the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control, more than 30% of the ordinary share capital of the company.

- (3) In sub-paragraph (2)(b) and (c) “associate” has the meaning given by paragraph 31(1), but does not include the trustees of an employee benefit trust as a result only of the individual’s having an interest in shares or obligations of the trust.
- (4) Chapter 11 of Part 7 of this Act (which deals with the attribution of interests in companies to beneficiaries of employee benefit trusts) applies for the purposes of sub-paragraph (2).
- (5) In this paragraph “employee benefit trust” has the same meaning as in that Chapter (see sections 550 and 551).

*Meaning of “associate”: trustees of discretionary trust*

- 33 (1) This paragraph applies for the purposes of paragraph 31(1)(c) (meaning of “associate”: trustees of settlement) where—
- (a) the individual (“the beneficiary”) is one of the objects of a discretionary trust,
  - (b) the property subject to the trust has at any time consisted of or included shares or obligations of the company mentioned in paragraph 28(2),
  - (c) the beneficiary has ceased to be eligible to benefit under the trust as a result of—
    - (i) an irrevocable disclaimer or release executed by the beneficiary, or
    - (ii) the irrevocable exercise by the trustees of a power to exclude the beneficiary from the objects of the trust,
  - (d) immediately after the beneficiary ceased to be so eligible, no associate of the beneficiary was interested in the shares or obligations of the company which were subject to the trust, and
  - (e) during the period of 12 months ending with the date on which the beneficiary ceased to be so eligible, neither the beneficiary nor any associate of the beneficiary received any benefit under the trust.
- (2) The beneficiary is not, as a result only of the matters mentioned in sub-paragraph (1) (a) and (b), to be regarded as having been interested in the shares or obligations of the company at any time during that period of 12 months.
- (3) In sub-paragraph (1) “associate” has the meaning given by paragraph 31, but with the omission of sub-paragraph (1)(c) of that paragraph (trusts and estates).

## PART 5

### REQUIREMENTS RELATING TO OPTIONS

*Requirements relating to options: introduction*

- 34 A share option is not a qualifying option unless the requirements of this Part of this Schedule as to the following are met at the appropriate time—
- the type of shares that may be acquired (see paragraph 35),
  - when the option is capable of being exercised (see paragraph 36),
  - the terms being agreed in writing (see paragraph 37), and

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the non-assignability of rights (see paragraph 38).

*Type of shares that may be acquired*

- 35 (1) The option must confer a right to acquire shares that—
- (a) form part of the ordinary share capital of the relevant company,
  - (b) are fully paid up, and
  - (c) are not redeemable.
- (2) Shares are not fully paid up for the purposes of sub-paragraph (1)(b) if there is any undertaking to pay cash to the relevant company at a future date.
- (3) For the purposes of sub-paragraph (1)(c) “redeemable” shares include shares that may become redeemable at a future date.

*Option to be capable of exercise within 10 years*

- 36 (1) The option must be capable of being exercised within the period of 10 years beginning with the date on which it is granted.
- (2) Where the exercise of the option is dependent on the fulfilment of conditions, the option is to be taken to be capable of being exercised within the period mentioned in sub-paragraph (1) if the conditions may be fulfilled within that period.

*Terms of option to be agreed in writing*

- 37 (1) The option must take the form of a written agreement between the person granting the option and the employee which meets the following requirements.
- (2) The agreement must state—
- (a) the date on which the option is granted;
  - (b) that it is granted under the provisions of this Schedule;
  - (c) the number, or maximum number, of shares that may be acquired;
  - (d) the price (if any) payable by the employee to acquire them, or the method by which that price is to be determined; and
  - (e) when and how the option may be exercised.
- (3) The agreement must set out any conditions, such as performance conditions, affecting the terms or extent of the employee’s entitlement.
- [<sup>F349</sup>(4) Where the shares that may be acquired by the employee are restricted shares, the agreement must contain details of the restrictions.
- (5) For the purposes of sub-paragraph (4)—
- (a) shares are “restricted shares” if there is any contract, agreement, arrangement or condition which makes provision to which any of subsections (2) to (4) of section 423 (restricted securities) would apply if the references in those subsections to the employment-related securities were to the shares, and
  - (b) “restrictions” means that provision.]

<sup>F349</sup>(6) .....

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### Textual Amendments

**F349** Sch. 5 para. 37(4)(5) substituted for Sch. 5 para. 37(4)-(6) (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 45\(3\)\(4\)](#); [S.I. 2003/1997, art. 2](#)

### *Non-assignability of rights*

- 38 The terms on which the option is granted—
- (a) must prohibit the person to whom it is granted from transferring any of that person’s rights under it, and
  - (b) if they permit it to be exercised after that person’s death, must not permit it to be exercised more than one year after the date of the death.

## PART 6

### COMPANY REORGANISATIONS

#### *Company reorganisations: introduction*

- 39 (1) This Part applies in connection with company reorganisations.
- (2) For the purposes of this Part there is a “company reorganisation” where a company (“the acquiring company”)—
- (a) obtains control of a company whose shares are subject to an outstanding qualifying option—
    - (i) as a result of making a general offer to acquire the whole of the issued share capital of that company which is made on a condition such that, if it is met, the person making the offer will have control of the company, or
    - (ii) as a result of making a general offer to acquire all the shares in the company which are of the same class as those to which the option relates;
  - (b) obtains control of such a company as a result of a compromise or arrangement sanctioned by the court under—
    - (i) section 425 of the Companies Act 1985 (c. 6) (power to compromise with creditors and members), or
    - (ii) Article 418 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) (corresponding provision for Northern Ireland);
  - (c) becomes bound or entitled under—
    - (i) sections 428 to 430 of that Act (power to acquire shares of shareholders dissenting from schemes or contract approved by majority), or
    - (ii) Articles 421 to 423 of that Order (corresponding provision for Northern Ireland),to acquire shares of the same class as shares that are subject to an outstanding qualifying option; or
  - (d) obtains all the shares of a company whose shares are subject to an outstanding qualifying option as a result of a qualifying exchange of shares (see paragraph 40).

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- (3) In sub-paragraph (2) “outstanding qualifying option” means a qualifying option that has yet to be exercised.

*Meaning of “qualifying exchange of shares”*

- 40 (1) For the purposes of the EMI code there is a “qualifying exchange of shares” where—
- (a) arrangements are made in accordance with which a company (“the new company”) acquires all the shares (“old shares”) in another company (“the old company”), and
  - (b) the following conditions are met.
- (2) The conditions are that—
- (a) the consideration for the old shares consists wholly of the issue of shares (“new shares”) in the new company;
  - (b) new shares are issued in consideration of old shares only at times when there are no issued shares in the new company other than—
    - (i) subscriber shares, and
    - (ii) new shares previously issued in consideration of old shares;
  - (c) the consideration for new shares of each description consists wholly of old shares of the corresponding description;
  - (d) new shares of each description are issued to holders of old shares of the corresponding description in respect of, and in proportion to, their holdings; and
  - (e) by virtue of the CGT capital reorganisation provisions, the exchange of shares is not treated as involving a disposal of the old shares or an acquisition of the new shares.
- (3) For the purposes of this paragraph old shares and new shares are of a corresponding description if, on the assumption that they were shares in the same company, they would be of the same class and carry the same rights.
- (4) In this paragraph—
- (a) references to “shares”, except in the expression “subscriber shares”, include securities; and
  - (b) “the CGT capital reorganisation provisions” means section 127 of TCGA 1992, as applied by section 135(3) of that Act (exchange of securities).

*Grant of replacement option*

- 41 (1) This paragraph applies if both of the following conditions are met in connection with a company reorganisation.
- (2) The first condition is that the holder of a qualifying option, by agreement with the acquiring company, releases the holder’s rights under that option (“the old option”) in consideration of the granting to him of rights (“the new option”) which are equivalent but relate to shares in the acquiring company.
- (3) The second condition is that the requirements of the following paragraphs are met— paragraph 42 (period within which replacement option must be granted), and paragraph 43 (further requirements to be met as to replacement option).

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- (4) If this paragraph applies, the new option is to be treated for the purposes of the EMI code as a “replacement option”.
- (5) Except where the contrary is indicated—
  - (a) references in the EMI code to a qualifying option include a replacement option, and
  - (b) a replacement option is to be treated for the purposes of the EMI code as if it had been granted on the date on which the old option was granted.
- (6) For the purposes of any of paragraphs 5 to 7 or section 536(1)(e), the total value of the shares in the acquiring company that are subject to the replacement option is to be taken to be equal to—
  - (a) the total value (as calculated in accordance with paragraph 5(6) to (8)) of the shares that were subject to the old option immediately before the release of rights under that option, or
  - (b) if the replacement option has been partially exercised, the proportion of that total value which corresponds to the proportion which the number of shares that remain subject to the option bears to the number of shares that were subject to it at the time when it was granted as a new option (see sub-paragraph (2) above).
- (7) In the EMI code references to “the old option” or “the new option” are to be construed in accordance with this paragraph.

*Period within which replacement option must be granted*

- 42 (1) To qualify as a replacement option the new option must be granted within the required period (see sub-paragraphs (2) to (4)).
- (2) If the company reorganisation falls within paragraph 39(2)(a), the required period is the period of 6 months after the date on which—
  - (a) the person making the offer has obtained control of the company, and
  - (b) any condition subject to which the offer is made is met.
- (3) If the company reorganisation falls within paragraph 39(2)(b) or (d), the required period is the period of 6 months after the date on which the acquiring company obtains control of the company whose shares are subject to the old option.
- (4) If the company reorganisation falls within paragraph 39(2)(c), the required period is the period during which the acquiring company remains bound or entitled as mentioned in that provision.

*Further requirements to be met as to replacement option*

- 43 (1) For the new option to qualify as a replacement option the following requirements must also be met.
- (2) The new option must be granted to the holder of the old option by reason of the holder’s employment—
  - (a) with the acquiring company, or
  - (b) if that company is a parent company, with that company or another member of the group.

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- (3) The requirements of—
- (a) paragraph 4 (purpose of granting option),
  - (b) paragraph 7 (maximum value of options in respect of relevant company) (as it has effect under sub-paragraph (4)), and
  - (c) Part 5 (requirements as to options),
- must be met in relation to the new option at the time of the release of rights under the old option (“the relevant time”).
- (4) For the purposes of paragraph 7 (as applied by sub-paragraph (3)(b)) the total value of the shares in the acquiring company that are subject to the new option is to be taken to be equal to the total value (as calculated in accordance with paragraph 5(6) to (8)) of the shares that were subject to the old option immediately before the relevant time.
- (5) In addition to the requirements mentioned in sub-paragraph (3)—
- (a) the independence requirement and the trading activities requirement must be met in relation to the acquiring company at the relevant time, and
  - (b) the individual to whom the new option is granted must be an eligible employee in relation to the acquiring company at that time.
- (6) The total market value, immediately before the relevant time, of the shares which were subject to the old option must be equal to the total market value, immediately after the grant of the new option, of the shares in respect of which that option is granted.
- (7) The total amount payable by the employee for the acquisition of the shares under the new option must be equal to the total amount that would have been payable for the acquisition of shares under the old option.

## PART 7

### NOTIFICATION OF OPTION TO INLAND REVENUE

#### *Notice of option to be given to Inland Revenue*

- 44 (1) For a share option to be a qualifying option, notice of the option must be given to the Inland Revenue within 92 days after the date of the grant of the option.
- (2) The notice must—
- (a) be given by the employer company, and
  - (b) be in a form required or authorised by the Inland Revenue.
- (3) The notice must contain, or be supported by, such information as the Inland Revenue may require for the purpose of determining whether the requirements of this Schedule are met.
- (4) The notice must also contain a declaration within each of sub-paragraphs (5) and (6).
- (5) A declaration within this sub-paragraph is a declaration by a director, or the secretary, of the employer company—
- (a) that in the opinion of that person the requirements of this Schedule are met in relation to the option, and

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- (b) that the information provided is, to the best of that person's knowledge, correct and complete.
- (6) A declaration within this sub-paragraph is a declaration by the individual to whom the option has been granted that the individual meets the requirement of paragraph 26 (commitment of working time) in relation to the option.
- (7) Any reference in this Part of this Schedule to the requirements (or any of the requirements) of this Schedule being met in relation to a share option is a reference to the requirements or requirement being met in relation to it at the appropriate time.

*Correction of notice by Inland Revenue*

- 45 (1) The Inland Revenue may amend a notice given under paragraph 44 so as to correct obvious errors or omissions in the notice.
- (2) A correction under this paragraph must be made by a notice given to the employer company.
- (3) No correction may be made under this paragraph more than 9 months after the day on which the notice under paragraph 44 was given to the Inland Revenue.
- (4) A correction under this paragraph is of no effect if the employer company, within 3 months after the date of issue of the notice of correction, gives notice to the Inland Revenue rejecting the correction.

*Notice of enquiry*

- 46 (1) This paragraph applies where notice of a share option is given under paragraph 44.
- (2) The Inland Revenue may enquire into the option if they give notice to the employer company of their intention to do so in accordance with this paragraph.
- (3) The Inland Revenue may enquire into whether the requirement of paragraph 26 (commitment of working time) is met in relation to the option by the individual to whom it has been granted if they give that individual notice of their intention to do so in accordance with this paragraph.
- (4) The Inland Revenue must give a copy of a notice under sub-paragraph (3) to the employer company.
- (5) Unless given by virtue of sub-paragraph (6), a notice of enquiry may not be given more than 12 months after the end of the period of 92 days mentioned in paragraph 44(1) (the period within which a notice under that paragraph must be given).
- (6) A notice of enquiry may be given at any time if the Inland Revenue discover that any of the information provided in or in connection with the notice under paragraph 44 was false or misleading in a material respect.
- (7) An option that has been the subject of one notice of enquiry under sub-paragraph (2) or (3) may not be the subject of another notice under that sub-paragraph, unless the notice is given by virtue of sub-paragraph (6).
- (8) In this paragraph a “notice of enquiry” means a notice given under sub-paragraph (2) or (3).

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*Completion of enquiry: closure notices*

- 47 (1) An enquiry under paragraph 46(2) is completed when the Inland Revenue give the employer company a notice—
- (a) informing the company that they have completed their enquiry, and
  - (b) stating their decision as to whether the requirements of this Schedule are met in relation to the option.
- (2) If the Inland Revenue conclude that the requirements of this Schedule are not so met, they must also give notice of that decision to the person to whom the option has been granted.
- (3) An enquiry under paragraph 46(3) is completed when the Inland Revenue give the individual concerned and the employer company a notice—
- (a) informing the recipients that they have completed their enquiry, and
  - (b) stating their decision as to whether the requirement of paragraph 26 (commitment of working time) is met by that individual in relation to the option.
- (4) References in the EMI code to a “closure notice” are to a notice under sub-paragraph (1) or (3).
- (5) A closure notice takes effect when it is issued.

*Completion of enquiry: application for closure notice to be given*

- 48 (1) An application may be made under this paragraph for a direction requiring the Inland Revenue to give a closure notice within a specified period.
- (2) The application may be made—
- (a) by the employer company, or
  - (b) in a case within paragraph 46(3), by the individual concerned.
- (3) The application must be made—
- (a) to the General Commissioners, or
  - (b) if the applicant so elects (in accordance with section 46(1) of TMA 1970), to the Special Commissioners.
- (4) The Commissioners hearing the application must hear and determine it in the same way as an appeal.
- (5) Those Commissioners must give a direction unless they are satisfied that the Inland Revenue have reasonable grounds for not giving a closure notice within a specified period.

*Effect of enquiry*

- 49 (1) If the Inland Revenue do not give a notice of enquiry, the requirements of this Schedule are taken to be met in relation to the option.
- (2) If the Inland Revenue do give a notice of enquiry, their decision stated in the closure notice is conclusive as to whether the requirements of this Schedule are met in relation to the option.
- (3) But this is subject—



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- (a) if their decision is that the requirements are not met, to the outcome of any appeal against that decision under paragraph 50;
  - (b) if their decision is that the requirements are met, to the outcome of any subsequent enquiry under paragraph 46(6) (enquiry arising from discovery of false or misleading information).
- (4) This paragraph does not affect the provisions of sections 532 to 539 (which relate to disqualifying events).

### *Appeals*

- 50 (1) The employer company may appeal against a decision of the Inland Revenue—
- (a) that notice of the grant of the option was not given in accordance with paragraph 44, or
  - (b) that the requirements of this Schedule are not met in relation to the option.
- (2) An individual may appeal against a decision of the Inland Revenue that the individual does not meet the requirement of paragraph 26 (commitment of working time).
- (3) Notice of the appeal must be given to the Inland Revenue within 30 days after the date when the closure notice is given to the appellant.
- (4) The appeal lies—
- (a) to the General Commissioners, or
  - (b) if the employer company or individual so elects (in accordance with section 46(1) of TMA 1970), to the Special Commissioners.

## **PART 8**

### SUPPLEMENTARY PROVISIONS

#### *Power to require information*

- 51 (1) The Inland Revenue may by notice require a person to provide them with information—
- (a) which they reasonably require for the performance of their functions under the EMI code, and
  - (b) which the person to whom the notice is addressed has or can reasonably obtain.
- (2) The power conferred by this paragraph extends, in particular, to information to enable the Inland Revenue—
- (a) to decide whether a share option is a qualifying option, or
  - (b) to determine the liability to tax, including capital gains tax, of any person who has been granted a qualifying option.
- (3) The notice must require the information to be provided within a specified period, which must not end earlier than 3 months after the date when the notice is given.

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#### *Annual returns*

- 52 (1) A company whose shares are subject to a qualifying option at any time during a tax year must deliver a return to the Inland Revenue.
- (2) The return must—
- (a) contain such information as the Inland Revenue may require, and
  - (b) be made before 7th July in the tax year following that to which it relates.

#### *Compliance with time limits*

- 53 (1) For the purposes of this Part and Part 7 a person is not to be regarded as having failed to do anything required to be done within a particular period of time if—
- (a) the person had a reasonable excuse for not doing it within that period, and
  - (b) if the excuse ceased to exist, the person did it without unreasonable delay after the excuse ceased to exist.
- (2) Where sub-paragraph (1)(b) applies, any further time limit running from the end of the period concerned is instead to run from the time when the thing in question was actually done.

#### *Power to amend by Treasury order*

- 54 (1) The Treasury may by order amend the EMI code—
- (a) to make such amendments of paragraphs 13 to 23 (the trading activities requirement and related provisions) as they consider expedient;
  - (b) to substitute different sums of money for those for the time being specified in—
    - (i) paragraphs 5(1) and 6(1) and (3) (maximum entitlement of employee);
    - (ii) paragraph 12(1) and (2) (the gross assets requirement).
- (2) An order under sub-paragraph (1)(b) which amends paragraphs 5(1) and 6(1) and (3) may amend section 536(1)(e) (other disqualifying events) so as to substitute the same sum for the one that is for the time being specified there.

#### *Meaning of “market value” of shares*

- 55 (1) For the purposes of the EMI code the “market value” of shares has the same meaning as it has for the purposes of TCGA 1992 by virtue of Part 8 of that Act.
- (2) Sub-paragraph (1) is subject to paragraph 5(7) (valuation of shares subject to restriction or risk of forfeiture) as it applies for the purposes of any provision of the EMI code.

#### *Determination of market value of shares*

- 56 (1) This paragraph applies to the determination of the market value of shares for the purposes of the EMI code.
- (2) Unless—
- (a) it is agreed between the employer company and the Inland Revenue, or
  - (b) a reference is made under sub-paragraph (4),

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the market value of shares is to be determined by the Inland Revenue.

- (3) Where the market value of shares on any date needs to be determined for the purposes of the EMI code, the Inland Revenue and the employer company may agree that it is to be determined by reference to a date or dates, or to the average of the values on a number of dates, stated in the agreement.
- (4) At any time before notice of the Inland Revenue's determination has been given to the employer company, the company may give the Inland Revenue a notice requiring the question of the market value of the shares to be referred to the Commissioners.
- (5) Any reference under sub-paragraph (4) must be made—
  - (a) to the General Commissioners, or
  - (b) if the applicant so elects (in accordance with section 46(1) of TMA 1970), to the Special Commissioners.
- (6) The Commissioners to whom the reference is made must determine it in the same way as an appeal.

#### *Appeal against determination of market value of shares*

- 57
- (1) The employer company may appeal against any determination by the Inland Revenue under paragraph 56.
  - (2) Notice of appeal must be given to the Inland Revenue within 30 days after the date when notice of their determination is given to the employer company.
  - (3) An appeal under this paragraph lies—
    - (a) to the General Commissioners, or
    - (b) if the applicant so elects (in accordance with section 46(1) of TMA 1970), to the Special Commissioners.

#### *Minor definitions*

- 58
- In the EMI code—
- “arrangements” includes any scheme, agreement or understanding, whether it is legally enforceable or not;
  - “company” means a body corporate;
  - “group of companies” means a parent company and its 51% subsidiaries;
  - “the group”, in relation to a parent company, means that company and its 51% subsidiaries;
  - “parent company” means a company that has one or more 51% subsidiaries and “single company” means a company that does not;
  - “research and development” has the meaning given by section 837A of ICTA;
  - “shares” includes stock.

#### *Index of defined expressions*

- 59
- In the EMI code the following expressions are defined or otherwise explained by the provisions indicated below:

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|   |  |
|---|--|
| the appropriate time                                | paragraph 1(4)   |
| arrangements  | paragraph 58(1)  |
| child   | section 832(5) of ICTA, (and see section 721(6) of this Act) |
| close company                                       | section 832(1) of ICTA, (and see paragraph 29(4))            |
| closure notice                                      | paragraph 47(4)  |
| company   | paragraph 58   |
| company reorganisation (in Part 6 of this Schedule) | paragraph 39(2)  |
| connected person                                    | section 718  |
| control   | section 719 (and see paragraphs 10(2) and 23(6))             |
| disqualifying event                                 | see sections 532 to 539                                      |
| distribution  | section 832(1) of ICTA                                       |
| earnings  | section 62 and see section 721(7)                            |
| the EMI code  | section 527(3)   |
| employee and employment                             | section 4  |
| eligible employee                                   | paragraph 24   |
| employer company                                    | paragraph 2  |
| excluded activities                                 | paragraph 16   |
| farming   | section 832(1) of ICTA                                       |
| General Commissioners                               | section 2 of TMA 1970  |
| generally accepted accounting practice              | [ <sup>F350</sup> section 50(1) of the Finance Act 2004]     |
| group of companies                                  | paragraph 58   |
| the group   | paragraph 58   |
| the Inland Revenue                                  | section 720(1)   |
| market value  | paragraph 55 (and see paragraph 5(7))                        |
| met (in Part 7 of this Schedule)                    | paragraph 44(7)  |
| new option  | paragraph 41(7)  |
| notice  | section 832(1) of ICTA                                       |
| [ <sup>F351</sup> offshore installation]            | [ <sup>F351</sup> section 837C of ICTA]                      |
| old option  | paragraph 41(7)  |
| ordinary share capital                              | section 832(1) of ICTA                                       |
| original option                                     | section 529(3)   |

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|                                   |   |
|-----------------------------------|---|
| parent company                    | paragraph 58                              |
| personal representatives          | section 721(1)                            |
| qualifying company                | paragraph 8                               |
| qualifying option                 | section 527(4) (and see paragraph 41(5))  |
| qualifying subsidiary             | paragraph 11                              |
| qualifying trade                  | paragraph 15                              |
| relevant company                  | paragraph 2                               |
| replacement option                | section 527(4)                            |
| the requirements of this Schedule | section 527(4)                            |
| research and development          | paragraph 58                              |
| share option                      | section 527(4)                            |
| shares                            | paragraph 58 (and see paragraph 40(4)(a)) |
| single company                    | paragraph 58                              |
| Special Commissioners             | section 4 of TMA 1970                     |
| 51% subsidiary                    | section 838(1) of ICTA                    |
| tax                               | section 832(3) of ICTA                    |
| tax year                          | section 721(1)                            |
| trade                             | section 832(1) of ICTA                    |
| United Kingdom                    | section 830 of ICTA                       |

#### Textual Amendments

**F350** Words in Sch. 5 para. 59 substituted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 48](#)

**F351** Words in Sch. 5 para. 59 inserted (with effect in accordance with Sch. 27 para. 17(6)(7) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 27 para. 17\(5\)](#)

## SCHEDULE 6

Section 722

### CONSEQUENTIAL AMENDMENTS

#### PART 1

##### INCOME AND CORPORATION TAXES ACT 1988

1 The Income and Corporation Taxes Act 1988 (c. 1) is amended as follows.

2 (1) Amend section 1 (the charge to income tax) as follows.

(2) For subsection (1) substitute—

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“(1) Income tax is charged in accordance with the Income Tax Acts on—

- (a) all amounts which, under those Acts, are charged to tax under any of Schedules A, D and F (set out in sections 15, 18 and 20),
- (b) all amounts which are charged to tax under any of the following provisions of ITEPA 2003—
  - (i) Part 2 (employment income),
  - (ii) Part 9 (pension income), and
  - (iii) Part 10 (social security income), and
- (c) any other amounts which, under the Income Tax Acts, are charged to income tax.”

(3) In subsection (5A) for “section 203” substitute “ PAYE regulations ”.

3 In section 4(1) (construction of references in Income Tax Acts to deduction of tax) for “in pursuance of section 203” substitute “ under PAYE regulations ”.

4 In section 9(3) (computation of income for corporation tax: application of income tax principles)—

(a) for “the like Schedules and Cases as apply for purposes of income tax” substitute—

“(a) Schedules A, D and F, and the Cases of those Schedules, as they apply for purposes of income tax, and

(b) the following provisions of ITEPA 2003 (which impose charges to income tax)—

(i) Part 2 (employment income),

(ii) Part 9 (pension income), and

(iii) Part 10 (social security income),” and

(b) after “those Schedules and Cases” insert “ and those Parts ”.

5 (1) Amend section 18 (Schedule D) as follows.

(2) In subsection (1), in paragraph (b) of Schedule D, for “or E” substitute “ or under ITEPA 2003 as employment income, pension income or social security income ”.

(3) In subsection (3)—

(a) in Case V for “income consisting of emoluments of any office or employment” substitute “ employment income, pension income or social security income on which tax is charged under ITEPA 2003 ”;

(b) in Case VI for “or E” substitute “ or by virtue of ITEPA 2003 as employment income, pension income or social security income ”.

6 Omit section 19 (Schedule E).

7 In section 21A(2) (computation of amount chargeable)—

(a) for “sections 588 and 589” substitute “ section 588 ”;

(b) for “sections 589A and 589B” substitute “ section 589A ”;

(c) for “1989 (deductions in respect of certain emoluments)” substitute “ 1989 (Schedule D: computation) ”.

8 Omit section 58 (foreign pensions).

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**Textual Amendments**

**F352** Sch. 6 para. 9 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 3](#) (with [Sch. 2](#))

**F353** 10 .....

**Textual Amendments**

**F353** Sch. 6 para. 10 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 3](#) (with [Sch. 2](#))

11 (1) Amend section 84A (costs of establishing share option or profit sharing schemes: relief from corporation tax) as follows.

(2) After subsection (3) insert—

“(3A) In this section, “share option scheme” means—

- (a) an SAYE option scheme within the meaning of the SAYE code (see section 516(4) of ITEPA 2003 (approved SAYE option schemes)), or
- (b) a CSOP scheme within the meaning of the CSOP code (see section 521(4) of that Act (approved CSOP schemes)).”

(3) In subsection (4), at the end add “to this Act or under Schedule 3 or 4 to ITEPA 2003 (approved SAYE option schemes and approved CSOP schemes)”.

12 After section 85A insert—

**“85B Approved share incentive plans**

Schedule 4AA (which provides for deductions relating to approved share incentive plans) shall have effect.”

13 (1) Amend section 86A (charitable donations: contributions to agent’s expenses) as follows.

(2) In subsection (1)(a) for “by virtue of section 203 and regulations under that section” substitute “under PAYE regulations”.

(3) In subsection (1)(b) for the words from “a scheme” to the end of the paragraph substitute “an approved scheme and pays the sums to an approved agent”.

(4) After subsection (1) insert—

“(1A) In subsection (1)(b) “approved scheme” and “approved agent” have the same meaning as in section 714 of ITEPA 2003.”

14 Omit sections 131 to 134 (miscellaneous provisions relating to the Schedule E charge).

15 Omit sections 135 to 137 (provisions relating to gains by directors and employees from share options).

16 (1) Amend section 138 (share acquisitions by directors and employees) as follows.

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- (2) In subsection (1)(b) for “Schedule E” substitute “ the employment income Parts of ITEPA 2003 ”.
- (3) In subsection (4)(b) for “Case I of Schedule E” substitute “ section 15 or 21 of ITEPA 2003 (earnings of employee resident and ordinarily resident in the UK) ”.
- 17 Omit section 140 (further interpretation of sections 135 to 139).
- 18 Omit sections 140A to 140H (further provisions relating to share acquisitions by directors and employees).
- 19 Omit sections 141 to 144 (vouchers and credit-tokens).
- 20 Omit section 144A (payments received free of tax).
- 21 Omit sections 145 to 147 (living accommodation).
- 22 Omit sections 148 to 151A (payments on retirement, sick pay and certain social security benefits).
- 23 For the sidenote to section 152 (notification of amount taxable under section 151) substitute “Notification of taxable amount of certain benefits”.
- 24 Omit sections 153 to 159AC and sections 160 to 168G (employees earning £8,500 or more and directors: expenses and benefits in kind).
- 25 Omit section 185 (approved share option schemes).
- 26 (1) Amend section 186 (approved profit sharing schemes) as follows.
- (2) In subsection (3)—
- (a) omit “the participant shall be chargeable to income tax under Schedule E for the year of assessment in which the entitlement arises on”, and
- (b) at the end add “ counts as employment income of the participant for the year of assessment in which the entitlement arises ”.
- (3) In subsection (4)—
- (a) omit “the participant shall be chargeable to income tax under Schedule E for the year of assessment in which the disposal takes place on”, and
- (b) at the end add “ counts as employment income of the participant for the year of assessment in which the disposal takes place ”.
- (4) In subsection (5)(a), for the words from “chargeable to income tax” to “those shares” substitute “entitled to a capital receipt (within the meaning of subsection (3) above) which is referable to those shares and—
- (i) an amount calculated by reference to that capital receipt counts as his employment income by virtue of subsection (3) above, or
- (ii) if the entitlement to the capital receipt arose before 6th April 2003, he was chargeable to income tax by virtue of that subsection (as it had effect before that date) in respect of that capital receipt.”.
- 27 In section 187 (interpretation of sections 185 and 186 and Schedules 9 and 10) omit subsections (1) to (4), (6) and (7), except so far as relating to profit sharing schemes.
- 28 Omit the following provisions (which give relief from income tax on various kinds of income)—



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- (a) section 187A;
  - (b) sections 189 to 198;
  - (c) sections 199 to 202.
- 29 Omit sections 202A and 202B (assessment on receipts basis).
- 30 Omit sections 203 to 204 (pay as you earn).
- 31 Omit sections 205 and 206 (assessments).
- 32 Omit section 206A (PAYE settlement agreements).
- 33 Omit section 207 (disputes as to domicile or ordinary residence).
- F354 34 .....

#### Textual Amendments

F354 Sch. 6 para. 34 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 3](#) (with [Sch. 2](#))

- 35 In section 257C(2A) (indexation of amounts in sections 257 and 257A) for “section 203” substitute “PAYE regulations”.
- 36 After section 266 insert—

#### “266A Life assurance premiums paid by employer

- (1) This section applies if—
- (a) pursuant to a non-approved retirement benefits scheme, the employer in any year of assessment pays a sum with a view to the provision of any relevant benefits for or in respect of any employee of that employer, and
  - (b) the payment is made under such an insurance or contract as is mentioned in section 266.

This section applies whether or not the accrual of the relevant benefits is dependent on any contingency.

- (2) Relief, if not otherwise allowable, shall be given to that employee under section 266 in respect of the payment to the extent, if any, to which such relief would have been allowable to him if—
- (a) the payment had been made by him, and
  - (b) the insurance or contract under which the payment is made had been made with him.
- (3) For the purposes of subsection (1)(a)—
- (a) a retirement benefits scheme is “non-approved” unless it is—
    - (i) an approved scheme,
    - (ii) a relevant statutory scheme, or
    - (iii) a scheme set up by a government outside the United Kingdom for the benefit of its employees or primarily for their benefit, and

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- (b) benefits are provided in respect of an employee if they are provided for the employee’s spouse, widow or widower, children, dependants or personal representatives.
- (4) Sections 611, 611A and 612 apply for the purposes of this section as they apply for the purposes of Chapter 1 of Part 14.
- (5) Section 388 of ITEPA 2003 (apportionment of payments in respect of more than one employee) applies in relation to a sum within subsection (1) as it applies in relation to a sum within section 386 of that Act (charge on payments to non-approved retirement benefits schemes).
- (6) This section does not apply in any case where either of the following provisions of ITEPA 2003 provides for section 386 of that Act not to apply—
  - (a) section 389 (employments where earnings charged on remittance basis), and
  - (b) section 390 (non-domiciled employees with foreign employers).”
- 37 In section 306(7) (claims) for “regulations made under section 203” substitute “PAYE regulations”.
- 38 In section 307(6)(a)(i) (withdrawal of relief) for “regulations under section 203” substitute “PAYE regulations”.
- 39 Omit section 313 (taxation of consideration for certain restrictive undertakings).
- F355 40 .....

**Textual Amendments**  
 F355 Sch. 6 para. 40 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 3](#) (with [Sch. 2](#))

- 41 Omit sections 315 to 318 (pensions etc. paid in respect of military or war service etc.).
- 42 Omit section 319 (crown servants: foreign service allowance).
- 43 Omit section 321 (consuls and other official agents).
- F356 44 .....

**Textual Amendments**  
 F356 Sch. 6 para. 44 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 3](#) (with [Sch. 2](#))

- 45 (1) Amend section 323 (visiting forces) as follows.
  - (2) Omit subsection (1).
  - (3) In subsection (2) for “subsection (1) above” substitute “ section 303(1) of ITEPA 2003 (exemption for earnings of visiting forces etc.) ”.
  - (4) In subsection (4)—
    - (a) for “subsections (1) and (2)” substitute “ subsection (2) ”;

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- (b) for “those subsections” substitute “ that subsection ”;
  - (c) before “the Visiting Forces Act 1952” insert “ Part 1 of ”.
- (5) In subsection (5) for “subsections (1) and (2)” substitute “ subsection (2) ”.
- (6) Omit subsection (6)(b) and the word “and” preceding it.
- (7) Omit subsection (7).
- 46 Omit section 330 (compensation for National-Socialist persecution).
- 47 (1) Amend section 332 (expenditure and houses of ministers of religion) as follows.
- (2) Omit subsections (1) and (2).
  - <sup>F357</sup>(3) .....
  - (4) Omit subsections (3A), (3B) and (4).

**Textual Amendments**

**F357** Sch. 6 para. 47(3) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\)](#), [Sch. 3](#) (with [Sch. 2](#))

- 48 (1) Amend section 336 (temporary residents in the United Kingdom) as follows.
- (2) In subsection (1) for “Schedule D” substitute “ a charge to which subsection (1A) applies ”.
  - (3) After subsection (1) insert—
    - “(1A) This subsection applies to—
    - (a) the charge under Schedule D,
    - (b) the charge under Part 9 of ITEPA 2003 (pension income) in respect of—
      - (i) income to which section 573, 605, 609, 610, 611, 623 or 629 of that Act applies,
      - (ii) any annual payment to which section 633 of that Act applies which is made by or on behalf of a person who is outside the United Kingdom, or
      - (iii) income to which section 583 of that Act applies if the paying scheme (see subsection (3) of that section) is a pilots' benefit fund (see section 587 of that Act), and
    - (c) the charge under Part 10 of ITEPA 2003 (social security income) in respect of benefits to which section 678 of that Act applies (foreign benefits).”

<sup>F358</sup>49 .....

**Textual Amendments**

**F358** Sch. 6 para. 49 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\)](#), [Sch. 3](#) (with [Sch. 2](#))

*Status: Point in time view as at 07/04/2005.*

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- 50 (1) Amend section 348 (payments out of profits or gains brought into charge to income tax: deduction of tax) as follows.
  - (2) In subsection (1) for “charged with tax under Case III of Schedule D, not being interest,” substitute “ to which this subsection applies ”.
  - (3) After subsection (1) insert—
    - “(1A) Subsection (1) applies to any annuity or other annual payment, not being interest—
      - (a) which is charged with tax under Case III of Schedule D,
      - (b) which is charged with tax under Part 9 of ITEPA 2003 (pension income) because section 605 of that Act applies to it (retirement annuity contracts: annuities), or
      - (c) which arises from a source in the United Kingdom and is charged with tax under Part 9 of ITEPA 2003 because section 609, 610 or 611 of that Act applies to it (certain employment-related annuities).”
- 51 (1) Amend section 349 (payments not out of profits or gains brought into charge to income tax, and annual interest) as follows.
  - (2) In subsection (1)(a) for “charged with tax under Case III of Schedule D, not being interest” substitute “ to which this paragraph applies ”.
  - (3) After the first sentence of subsection (1) insert—
    - “(1A) Paragraph (a) of subsection (1) applies to any annuity or other annual payment, not being interest—
      - (a) which is charged with tax under Case III of Schedule D,
      - (b) which is charged with tax under Part 9 of ITEPA 2003 (pension income) because section 605 of that Act applies to it, or
      - (c) which arises from a source in the United Kingdom and is charged with tax under Part 9 of ITEPA 2003 because section 609, 610 or 611 of that Act applies to it.”
  - (4) Number the second sentence of subsection (1) as subsection (1B).
  - (5) In the new subsection (1B) for “This subsection” substitute “ Subsection (1) ”.
- 52 In section 376(2) (qualifying borrowers and qualifying lenders) for the words from “an office or employment” to “Schedule E” substitute “ an office or employment which would, but for some special exemption or immunity from tax, be a taxable employment under Part 2 of ITEPA 2003 (as defined by section 66(3) of that Act) ”.

F359 53 .....

**Textual Amendments**  
**F359** Sch. 6 para. 53 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 3](#) (with [Sch. 2](#))

F360 54 .....

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**Textual Amendments**

**F360** Sch. 6 para. 54 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

55 (1) Amend section 418 (“distribution” to include certain expenses of close companies) as follows.

(2) In subsection (3)(a)—

(a) for “to which Chapter II of Part V applies” substitute “to which Part 3 of ITEPA 2003 applies (earnings and benefits etc. treated as employment income) without the exclusion in section 216 of that Act (provisions not applicable to lower-paid employment)”; and

(b) for “sections 154 to 165” substitute “ Chapters 6 to 10 of Part 3 and section 223 of that Act (cars and vans, loans, shares, other benefits, and payments on account of director’s tax) ”.

(3) In subsection (3)(b) for “section 145” substitute “ Chapter 5 of Part 3 of ITEPA 2003 ”.

(4) In subsection (4) for “Chapter II of Part V” substitute “ Chapters 6 to 10 of Part 3 of ITEPA 2003 ”.

**F361** 56 .....

**Textual Amendments**

**F361** Sch. 6 para. 56 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

**F362** 57 .....

**Textual Amendments**

**F362** Sch. 6 para. 57 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

**F363** 58 .....

**Textual Amendments**

**F363** Sch. 6 para. 58 repealed (with effect in accordance with s. 77 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(7\)](#)

**F364** 59 .....

**Textual Amendments**

**F364** Sch. 6 para. 59 repealed (with effect in accordance with s. 77 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(7\)](#)

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F365 60 .....

**Textual Amendments**  
F365 Sch. 6 para. 60 repealed (with effect in accordance with s. 77 of the amending Act) by Finance Act 2004 (c. 12), Sch. 42 Pt. 2(7)

F366 61 .....

**Textual Amendments**  
F366 Sch. 6 para. 61 repealed (with effect in accordance with s. 77 of the amending Act) by Finance Act 2004 (c. 12), Sch. 42 Pt. 2(7)

- 62 (1) Section 577 (business entertaining expenses) is amended as follows.
- (2) Omit subsection (1)(b) and the word “and” preceding it.
- (3) In subsection (3) omit the words from “but where-” to the end of the subsection.

63 Omit section 579(1) (statutory redundancy payments).

64 Omit section 580(3) (provisions supplementary to section 579(1)).

F367 65 .....

**Textual Amendments**  
F367 Sch. 6 para. 65 repealed (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), Sch. 3 (with Sch. 2)

F368 66 .....

**Textual Amendments**  
F368 Sch. 6 para. 66 repealed (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), Sch. 3 (with Sch. 2)

- 67 (1) Amend section 588 (training courses for employees) as follows.
- (2) For subsections (1) and (2) substitute—
  - “(1) This section applies where a person (“the employer”) incurs retraining course expenses within the meaning of section 311 of ITEPA 2003 (exemptions: retraining courses).”
- (3) For paragraphs (a) and (b) of subsection (3) substitute—
  - “(a) an employer incurs expenditure in paying or reimbursing retraining course expenses as mentioned in subsection (1) above; and
  - (b) by virtue of section 311 of ITEPA 2003, no liability to income tax arises in respect of the payment or reimbursement.”
- (4) Omit subsection (5)(a).

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- (5) In subsection (5)(b) for the words from “such a failure” to the end of the paragraph substitute “ a failure to meet a condition of the kind mentioned in section 312(1)(b) (i) or (ii) of ITEPA 2003 ”.
- (6) In subsection (6) for “comply with any provision of section 589(3) and (4)” substitute “ meet a condition in section 312(1)(b)(i) or (ii) of ITEPA 2003 ”.
- 68 Omit section 589 (qualifying courses of training etc.).
- 69 (1) Section 589A (counselling services for employees) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) This section applies where expenditure (“relevant expenditure”)—
- (a) is incurred in the provision of services to a person (“the employee”) in connection with the cessation of the person’s office or employment, or
- (b) is incurred in the payment or reimbursement of—
- (i) fees for such provision, or
- (ii) travelling expenses incurred in connection with such provision,
- and (in either case) the relevant conditions are met.
- (1A) In subsection (1) above “the relevant conditions” means—
- (a) conditions A to D for the purposes of section 310 of ITEPA 2003 (exemptions: counselling and other outplacement services), and
- (b) in the case of travel expenses, condition E for those purposes.”
- (3) Omit—
- (a) subsections (2) to (6), and
- (b) subsection (10).
- 70 (1) Section 589B (qualifying counselling services etc.) is amended as follows.
- (2) Omit subsections (1) to (4A).
- (3) In subsection (5) omit “this section or”.
- 71 In section 591D (provisions supplementary to section 591C) omit subsection (6).
- 72 For section 592(7) (exempt approved schemes) substitute—
- “(7) Any contribution paid under the scheme shall be allowed to be deducted from employment income for the year of assessment in which the contribution is paid.
- A deduction under this subsection may only be made once in respect of the same contribution.”
- 73 In section 594(1) (exempt statutory schemes)—
- (a) for the words “shall, in assessing tax under Schedule E, be allowed to be deducted as an expense incurred in” substitute “ shall be allowed to be deducted from employment income for ”;
- (b) at the end insert— “ A deduction under this section may only be made once in respect of the same contribution. ”
- 74 Omit sections 595 and 596 (payments by employer to retirement benefits scheme).

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- 75 Omit sections 596A to 596C (benefits under non-approved retirement benefits schemes).
- 76 Omit section 597 (charge to tax: pensions).
- 77 In section 599A (charge to tax: payments out of surplus funds) omit subsections (5), (6) and (8).
- 78 Omit section 600 (charge to tax: unauthorised payments to or for employees).
- 79 (1) Amend section 606 (default of administrator of retirement benefits scheme) as follows.
- (2) In subsection (9) after “this Chapter” insert “ or Chapter 2 of Part 6 of ITEPA 2003 (benefits from non-approved pension schemes) ”.
- (3) In subsection (11)(b) after “this Chapter” insert “ or Chapter 2 of Part 6 of ITEPA 2003 (benefits from non-approved pension schemes) ”.
- 80 (1) Amend section 607 (marine pilots: pilots' benefit fund) as follows.
- (2) In subsection (2)(a) for “597 to 600” substitute “ 598 to 599A ”.
- (3) In subsection (2)(b) for “under section 600” substitute “ in accordance with section 584 of ITEPA 2003 (unauthorised payments) ”.
- (4) For subsection (3)(a) substitute—
- “(a) in section 592—
- (i) subsections (4) to (6) shall be omitted; and
- (ii) for subsection (7) there shall be substituted—
- “(7) Any contribution paid under the scheme by a member of the fund shall, in assessing tax under Schedule D, be allowed to be deducted as an expense.”;
- (5) In subsection (3)(b) for “sections 597 to 606 (except sections 601 to 603)” substitute “ sections 598 to 599A and sections 604 to 606 ”.
- (6) Omit subsection (3)(b)(iv) and the word “and” preceding it.
- 81 In section 608 (charge to tax on annuities paid out of superannuation funds approved before 6th April 1980) omit subsection (4).
- 82 In section 612(1) (interpretation etc. of Chapter) in the definition of “remuneration”—
- (a) in paragraph (a) for “in respect of which tax is chargeable under Schedule E and which” substitute “ which is chargeable to tax as employment income and ”; and
- (b) in paragraph (b) for “section 148” substitute “ Chapter 3 of Part 6 of ITEPA 2003 (payments and benefits on termination of employment etc.) ”.
- 83 In section 613 (Parliamentary pension funds) omit subsections (1) to (3).
- 84 In section 614(3) (exemptions and reliefs in respect of income tax from investments etc. of certain pension schemes) for “paragraph (b), (c), (d) or (f) of subsection (2) of section 615” substitute “ section 648, 649, 650 or 651 of ITEPA 2003 ”.
- 85 In section 615 (exemption from tax in respect of certain pensions) omit subsections (1), (2), (4), (5) and (8).



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- 86 Omit section 616 (other overseas pensions).
- 87 (1) Amend section 617 (social security benefits and contributions) as follows.
- (2) Omit subsections (1) and (2).
- F369(3) . . . . .

**Textual Amendments**

**F369** Sch. 6 para. 87(3) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

- 88 Omit section 617A (tax credits under Part 1 of Tax Credits Act 2002 (c. 21)).
- 89 In section 624(2) (sponsored superannuation schemes and controlling directors) for “Case I of Schedule E in respect of his emoluments” substitute “ section 15 of ITEPA 2003 in respect of his general earnings ”.
- 90 (1) Amend section 638 (other restrictions on approval of a personal pension scheme) as follows.
- (2) In subsection (7) for “emoluments” substitute “ general earnings ”.
- (3) In subsection (11)—
- (a) for “a savings-related share option scheme” substitute “ an SAYE option scheme ”, and
- (b) for “an employee share ownership plan” substitute “ a share incentive plan ”.
- (4) In subsection (12)—
- (a) in paragraph (a), for “a savings-related share option scheme” substitute “ an SAYE option scheme ”, and
- (b) in paragraph (b)—
- (i) for “an employee share ownership plan” substitute “ a share incentive plan ”, and
- (ii) for “employee share ownership plan”, in the second place in which it appears, substitute “ share incentive plan ”.
- (5) In subsection (13)—
- (a) omit the definition of “employee share ownership plan”, and
- (b) for the definition of “savings-related share option scheme” substitute—
- ““SAYE option scheme” has the same meaning as in the SAYE code (see section 516 of ITEPA 2003 (approved SAYE option schemes)), and
- “share incentive plan” has the same meaning as in the SIP code (see section 488 of that Act (approved share incentive plans)).”
- 91 (1) Section 643 (employer’s contributions and personal pension income etc.) is amended as follows.
- (2) Omit subsection (1).
- (3) In subsection (5) omit “shall be assessable to tax under Schedule E (and section 203 shall apply accordingly) and”.

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- 92 (1) Amend section 644 (meaning of “relevant earnings”) as follows.
- (2) In subsection (2)(a) for “emoluments chargeable under Schedule E” substitute “general earnings”.
- (3) In subsection (2)(b) for “emoluments of” substitute “earnings from”.
- (4) In subsection (3) for “emoluments”, in both places where it occurs, substitute “general earnings”.
- (5) In subsection (4)(a) for “Schedule E” substitute “ITEPA 2003”.
- (6) In subsection (4)(b) for “section 148” substitute “Chapter 3 of Part 6 of ITEPA 2003 (payments and benefits on termination of employment etc.)”.
- (7) In each of the following provisions for “emoluments” substitute “general earnings”
- (a) subsection (5);
  - (b) subsection (6A);
  - (c) subsection (6D)(c);
  - (d) subsection (6E)(d).
- 93 (1) Amend section 645 (earnings from pensionable employment) as follows.
- (2) In subsection (3)(c) for “section 596(1)(a), (b) or (c)” substitute “section 387(2) of ITEPA 2003 (meaning of non-approved retirement benefits scheme)”.
- (3) In subsection (4A)—
- (a) for “emoluments” substitute “earnings”;
  - (b) for “foreign emoluments within the meaning of section 192” substitute “earnings and amounts treated as earnings to which subsection (4B) applies”;
  - (c) for “section 596(1)(a), (b) or (c)” substitute “section 387(2) of ITEPA 2003 (meaning of non-approved retirement benefits scheme)”.
- (4) After subsection (4A) insert—
- “(4B) This subsection applies to earnings and amounts treated as earnings for a year of assessment if—
- (a) the employee or office-holder is not domiciled in the United Kingdom in that year, and
  - (b) the employment is with a foreign employer.
- (4C) If there is a dispute as to whether the employee or office-holder is not domiciled in the United Kingdom, sections 42 and 43 of ITEPA 2003 (Board to determine dispute as to domicile) apply to the dispute as they apply to a dispute mentioned in section 42(1) of that Act.
- (4D) In this section—
- “earnings and amounts treated as earnings” means earnings and amounts treated as earnings which constitute employment income (see section 7(2) (a) or (b) of ITEPA 2003);
- “foreign employer” has the meaning given by section 721 of ITEPA 2003.”
- 94 In section 646(2) (meaning of “net relevant earnings”) for paragraph (b) substitute—

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- “(b) deductions made by virtue of section 232, 336, 343, 344 or 351 of ITEPA 2003 (mileage allowance, expenses, professional membership fees, annual subscriptions, ministers of religion);
- (ba) travelling or subsistence expenses deducted by virtue of Part 5 of that Act;
- (bb) deductions made by virtue of section 332(3) of this Act;”
- 95 (1) Amend section 646A (earnings from associated employments) as follows.
- (2) In subsection (2) for “emoluments” substitute “ general earnings ”.
- (3) In subsection (3) for “emoluments” substitute “ general earnings ”.
- 96 Omit sections 647 to 648A (personal pensions: unauthorised payments, contributions under unapproved arrangements and annuities).
- 97 In section 657(2)(f)(i) (purchased life annuities to which section 656 applies) for “section 596(1)” substitute “ section 387(2) of ITEPA 2003 (meaning of non-approved retirement benefits scheme) ”.
- 98 In section 658A(1) (charges and assessments on administrators) after “this Part” insert “ or under section 394(2) of ITEPA 2003 (benefits from non-approved pension schemes) ”.
- 99 (1) Amend section 659B (definition of insurance company) as follows.
- (2) For subsection (9)(a) substitute—
- “ (a) any duty to pay under PAYE regulations tax charged under Part 9 of ITEPA 2003 (pension income) because section 580 of that Act applies (approved retirement benefits schemes: pensions and annuities);”.
- (3) In subsection (9)(c) after “section 605” insert “ of this Act or section 589 of ITEPA 2003 ”.
- (4) For subsection (9)(d) substitute—
- “ (d) any duty to pay under PAYE regulations tax charged under Part 9 of ITEPA 2003 (pension income) because section 595 of that Act applies (approved personal pension schemes: annuities).”
- 100 After section 686A insert—

**“686B Share incentive plans: distributions in respect of unappropriated shares**

- (1) This section applies to income of the trustees of an approved share incentive plan consisting of dividends or other distributions in respect of shares held by them in relation to which the requirements of Part 4 of Schedule 2 to ITEPA 2003 (approved share incentive plans: types of shares that may be awarded) are met.
- (2) Income to which this section applies is income to which section 686 applies only if and when—
- (a) the period applicable to the shares under the following provisions of this section comes to an end without the shares being awarded to a participant in accordance with the plan, or
- (b) if earlier, the shares are disposed of by the trustees.

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- (3) If any of the shares in the company in question are readily convertible assets at the time the shares are acquired by the trustees, the period applicable to the shares is the period of two years beginning with the date on which the shares were acquired by the trustees.

This is subject to subsection (5).

- (4) If at the time of the acquisition of the shares by the trustees none of the shares in the company in question are readily convertible assets, the period applicable to the shares is—
- (a) the period of five years beginning with the date on which the shares were acquired by the trustees, or
  - (b) if within that period any of the shares in that company become readily convertible assets, the period of two years beginning with the date on which they did so,

whichever ends first.

This is subject to subsection (5).

- (5) If the shares are acquired by the trustees by virtue of a payment in respect of which a deduction is allowed under paragraph 9 of Schedule 4AA (deduction for contribution to plan trust), the period applicable to the shares is the period of ten years beginning with the date of acquisition.
- (6) For the purposes of determining whether shares are awarded to a participant within the period applicable under the above provisions, shares acquired by the trustees at an earlier time are taken to be awarded to a participant before shares of the same class acquired by the trustees at a later time.
- (7) For the purposes of this section shares which are subject to provision for forfeiture are treated as acquired by the trustees if and when the forfeiture occurs.
- (8) In relation to shares acquired by the trustees before 11th May 2001 this section has effect with the substitution—
- (a) in subsection (3), of “Subject to subsection (4)” for the words before “the period applicable”, and
  - (b) in subsection (4)(b), of “the shares in question” for “any of the shares in that company”.

### **686C Interpretation of section 686B**

- (1) Section 686B and this section form part of the SIP code (see section 488 of ITEPA 2003 (approved share incentive plans)).
- (2) Accordingly, expressions used in section 686B or this section and contained in the index at the end of Schedule 2 to that Act (approved share incentive plans) have the meaning indicated by that index.
- (3) References in section 686B to shares being awarded to a participant include references to the shares being acquired on behalf of the participant as dividend shares.
- (4) In section 686B, “readily convertible assets” has the meaning given by sections 701 and 702 of ITEPA 2003, but this is subject to subsection (5).

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- (5) In determining for the purposes of section 686B whether shares are readily convertible assets, any market for the shares that—
- (a) is created by virtue of the trustees acquiring shares for the purposes of the plan, and
  - (b) exists solely for the purposes of the plan,
- shall be disregarded.”
- 101 In section 779(13)(e) (sale and lease-back: limitation on tax reliefs), for “a deduction from emoluments to be assessed under Schedule E made in pursuance of section 198(1)” substitute “ a deduction from earnings allowed under section 336 of ITEPA 2003 (expenses) ”.
- 102 In section 781(4)(d) (assets leased to traders and others), for “a deduction from emoluments to be assessed under Schedule E made in pursuance of section 198(1)” substitute “ a deduction from earnings allowed under section 336 of ITEPA 2003 (expenses) ”.
- 103 In section 794(2)(b) (requirements as to residence) for “income tax chargeable under Schedule E” substitute “ income tax on employment income ”.
- 104 In section 824(4A) (repayment supplement: individuals and others) for “section 203” substitute “ PAYE regulations ”.
- 105 (1) Amend section 828 (orders and regulations made by the Treasury or the Board) as follows.
- (2) In subsection (1), for “subsection (2)” substitute “ subsections (2) and (5) ”.
  - (3) In subsection (3), for “subsection (4)” substitute “ subsections (4) and (5) ”.
  - (4) At the end add—

“(5) Nothing in this section applies in relation to any of the following (in relation to which section 717 of ITEPA 2003 applies)—

    - (a) any power of the Treasury or the Board to make any order or regulations under ITEPA 2003;
    - (b) any statutory instrument containing any order or regulations made by the Treasury or the Board under that Act.”
- 106 In section 830 (territorial sea and designated areas) omit subsection (5).
- 107 In section 831(3) (interpretation of ICTA) before the entry relating to “the Management Act” insert—

““ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003;”.
- 108 (1) Amend section 833 (interpretation of Income Tax Acts) as follows.
- (2) For subsection (3)(a) substitute—

“(a) any payment or other benefit charged to tax under Chapter 3 of Part 6 of ITEPA 2003 (payments and other benefits on termination of employment);”.
  - (3) For subsection (4)(a) and (b) substitute—

“(a) any income charged to tax under ITEPA 2003 except—

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- (i) payments that meet the conditions in section 623 of that Act (return of surplus employee additional voluntary contributions); and
- (ii) jobseeker’s allowance (to which Chapter 3 of Part 10 of that Act applies);
- (b) any income from any property which is attached to or forms part of the general earnings from any employment;”.
- (4) For paragraphs (a) to (e) of subsection (5) substitute “ income which is earned income by virtue of section 529 ”.
- 109      After Schedule 4 insert—

“SCHEDULE  
4AA

Section 85B

SHARE INCENTIVE PLANS: CORPORATION TAX DEDUCTIONS

*Introductory*

- 1      (1) This Schedule forms part of the SIP code (see section 488 of ITEPA 2003 (approved share incentive plans)).
- (2) Accordingly, expressions used in this Schedule and contained in the index at the end of Schedule 2 to that Act (approved share incentive plans) have the meaning indicated by that index.
- (3) References in this Schedule to deductions are to deductions by a company in calculating for the purposes of corporation tax the profits of a trade carried on by it.
- (4) Sub-paragraph (3) is subject to paragraph 13 (application of provisions to expenses of management of investment companies etc.).

*Deduction for providing free or matching shares*

- 2      (1) Where, under an approved share incentive plan, shares are awarded to employees as free or matching shares by reason of their employment with a company, a deduction is allowed under this paragraph to that company.
- (2) Any such deduction—
- (a) is of an amount equal to the market value of the shares at the time they are acquired by the trustees, and
- (b) must be made for the period of account in which the shares are awarded to employees in accordance with the plan.
- (3) Except as provided by sub-paragraph (1), no deduction may be made by the company or any associated company in respect of the provision of those shares.

This is subject to paragraphs 7 and 8 (deductions for costs of setting up, and contributions to running expenses of, plan).

- (4) Where the shares are awarded under a group plan, the market value of the shares at the time they are acquired by the trustees shall for the purposes

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of this paragraph be taken to be the relevant proportion of the total market value of the shares included in the award.

- (5) For the purposes of sub-paragraph (4) “the relevant proportion” means the proportion that the number of shares in the award awarded to the employees of the company concerned bears to the total number of shares in the award.
- (6) In determining the market value of any shares for the purposes of this paragraph, if shares have been acquired by the trustees on different days it shall be assumed that those acquired on an earlier day are awarded to employees under the plan before those acquired by the trustees on a later day.
- (7) If a deduction is made under this paragraph by a company, no deduction may be made by any other company under this paragraph in respect of the provision of the shares.
- (8) This paragraph has effect subject to paragraph 4 (cases in which no deduction is allowed).

*Deduction for additional expenses in providing partnership shares*

- 3 (1) Where under an approved share incentive plan—
  - (a) partnership shares are awarded to employees by reason of their employment with a company, and
  - (b) the market value of those shares at the time they are acquired by the trustees exceeds the partnership share money paid by the participants to acquire those shares,a deduction is allowed under this paragraph to that company.
- (2) Any such deduction—
  - (a) is of an amount equal to the amount of the excess referred to in sub-paragraph (1)(b), and
  - (b) must be made for the period of account in which the shares are awarded to employees in accordance with the plan.
- (3) Except as provided by sub-paragraph (1), no deduction may be made by that company or any associated company in respect of the provision of those shares.

This is subject to paragraphs 7 and 8 (deductions for costs of setting up, and contributions to running expenses of, plan).
- (4) If a deduction is made under this paragraph by a company, no deduction may be made by any other company under this paragraph in respect of the provision of the shares.
- (5) This paragraph has effect subject to paragraph 4 (cases in which no deduction is allowed).

*Cases in which no deduction is allowed*

- 4 (1) No deduction is allowed under paragraph 2 or 3 (deductions for providing free or matching shares or for additional expenses in providing partnership shares) in the following cases.

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- (2) No deduction is allowed in respect of shares awarded to an individual under the plan unless, at the time of the award, any earnings from the required employment are (or would be) chargeable earnings.
- (3) In sub-paragraph (2)—
  - “chargeable earnings” means general earnings to which any of the charging provisions of Chapter 4 or 5 of Part 2 of ITEPA 2003 apply, and
  - the “required employment” means the employment by reference to which the individual is eligible to participate in the award.
- (4) In sub-paragraph (3), the reference to any of the charging provisions of Chapter 4 or 5 of Part 2 of that Act has the same meaning as it has in the employment income Parts of ITEPA 2003 (see sections 14(3) and 20(3) of that Act).
- (5) No deduction is allowed in respect of shares that are liable to depreciate substantially in value for reasons that do not apply generally to shares in the company.
- (6) No deduction is allowed if a deduction has been made—
  - (a) by the company, or
  - (b) by an associated company of the company,
 in respect of the provision of the same shares for this or another trust.
- (7) Sub-paragraph (6) applies whatever the nature or purpose of the other trust and whatever the basis on which the deduction was made.
- (8) For the purposes of determining whether the same shares have been provided to more than one trust, if shares have been acquired by the trustees of the plan trust on different days it shall be assumed that those acquired on an earlier day are awarded under the plan before those acquired by the trustees on a later day.
- (9) No deduction is allowed in respect of the award of shares acquired by the trustees by virtue of a payment in respect of which a deduction has been made under paragraph 9 (deduction for contribution to plan trust) or 10(3) (further deduction where deduction under paragraph 9 withdrawn).

*No deduction for expenses in providing dividend shares*

- 5 (1) No deduction is allowed for expenses in providing shares that are acquired on behalf of individuals under an approved share incentive plan as dividend shares.
- (2) This is subject to paragraph 8 (deductions for contributions to running expenses of plan).

*Treatment of forfeited shares*

- 6 (1) This paragraph applies if any of a participant’s plan shares are forfeited.
- (2) The shares are treated for the purposes of this Schedule as acquired by the trustees—



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- (a) when the forfeiture occurs, and
  - (b) for no consideration.
- (3) No deduction is allowed under paragraph 2 or 3 (deductions for providing free or matching shares or for additional expenses in providing partnership shares) in respect of any subsequent award of those shares under the plan.

*Deduction for costs of setting up the plan*

- 7 (1) A deduction is allowed under this paragraph for expenses incurred by a company in establishing a share incentive plan which is approved by the Inland Revenue.
- (2) No deduction may be made under this paragraph if—
- (a) any employee acquires rights under the plan, or
  - (b) the trustees acquire any shares for the purposes of the plan, before the Inland Revenue approve the plan.
- (3) If Inland Revenue approval of the plan is given more than nine months after the end of the period of account in which the expenses are incurred, the expenses are treated for the purposes of this paragraph as incurred in the period in which the approval is given.
- (4) No other deduction is allowed in respect of expenses for which a deduction is allowed under this paragraph.

*Deductions for contributions to running expenses of plan*

- 8 (1) Nothing in this Schedule affects any deduction for expenses incurred by a company in contributing to the expenses of the trustees in operating an approved share incentive plan.
- (2) For this purpose the expenses of the trustees in operating the plan—
- (a) do not include expenses in acquiring shares for the purposes of the trust, other than incidental acquisition costs, but
  - (b) do include the payment of interest on money borrowed by them for that purpose.
- (3) In sub-paragraph (2)(a) “incidental acquisition costs” means any fees, commission, stamp duty and similar incidental costs attributable to the acquisition of the shares.

*Deduction for contribution to plan trust*

- 9 (1) A deduction is allowed to a company under this paragraph where—
- (a) on or after 6th April 2003, that company makes a payment to the trustees of an approved share incentive plan in order to enable them to acquire shares in that company or a company which controls it,
  - (b) the payment is applied by the trustees to acquire such shares,
  - (c) the shares are not acquired from a company, and
  - (d) the condition in sub-paragraph (2) is met in relation to the company in which the shares are acquired.

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- (2) The condition in this sub-paragraph is that, at the end of the period of 12 months beginning with the date of the acquisition, the trustees hold shares in the company for the plan trust that—
  - (a) constitute not less than 10 per cent of the ordinary share capital of the company, and
  - (b) carry rights to not less than 10 per cent of—
    - (i) any profits available for distribution to shareholders of the company,
    - (ii) any assets of that company available for distribution to its shareholders in the event of a winding-up.
- (3) For the purposes of sub-paragraph (2), shares that have been appropriated to, and acquired on behalf of, an individual under the plan shall continue to be treated as held by the trustees of the plan trust for the beneficiaries of that trust until such time as they cease to be subject to the plan (within the meaning of the SIP code).
- (4) A deduction allowed under this paragraph—
  - (a) is of an amount equal to the amount of the payment referred to in sub-paragraph (1), and
  - (b) must be made for the period of account in which the condition in sub-paragraph (2) is met.
- (5) No other deduction is allowed for any amount in respect of which a deduction has been made under this paragraph (except as specified in paragraph 10).

*Withdrawal of deduction under paragraph 9*

- 10 (1) The Inland Revenue may by notice direct that the benefit of a deduction made under paragraph 9 is withdrawn where—
  - (a) fewer than 30 per cent of the shares acquired by virtue of the payment in respect of which the deduction is made have been awarded under the plan before the end of the period of 5 years beginning with the date of acquisition, or
  - (b) not all the shares acquired by virtue of that payment have been so awarded before the end of the period of 10 years beginning with that date.
- (2) The effect of a direction under sub-paragraph (1)(a) or (b) is that the amount of the deduction is treated as a trading receipt of the company for the period of account in which the direction is given.
- (3) However, where—
  - (a) the Inland Revenue give a direction under sub-paragraph (1)(a) or (b) in respect of any deduction, and
  - (b) at any time after the giving of the direction, all the shares acquired by virtue of the payment in respect of which the deduction was made are awarded under the plan,
 a further deduction is allowed under this sub-paragraph to the company which made the payment.
- (4) A deduction under sub-paragraph (3)—

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- (a) is of an amount equal to the amount of the payment referred to in that sub-paragraph, and
  - (b) must be made for the period of account in which sub-paragraph (3) (b) is first satisfied.
- (5) No other deduction is allowed in respect of any amount for which a deduction has been made under sub-paragraph (3).
- (6) Sub-paragraph (8) applies where—
- (a) a deduction is made under paragraph 9 (deduction for contribution to plan trust) or sub-paragraph (3) in respect of a payment for the acquisition of shares, but
  - (b) shares are awarded under the plan to an individual at a time when the earnings from the required employment are not (or would not be if there were any) chargeable earnings.
- (7) In sub-paragraph (6) “required employment” and “chargeable earnings”, in relation to an individual, have the same meanings as they have in paragraph 4(2) (cases in which no deduction is allowed).
- (8) An amount equal to the appropriate proportion of the deduction is treated as a trading receipt of the company for the period of account in which the shares are so awarded.
- (9) For the purposes of sub-paragraph (8), the appropriate proportion of the deduction is the proportion which the number of shares awarded to the individual bears to the total number of shares acquired by virtue of the payment.
- (10) For the purposes of this paragraph, where shares are acquired by the trustees on different days, it shall be assumed that those acquired on an earlier day are awarded to employees under the plan before those acquired by the trustees on a later day.

*Withdrawal of deductions on withdrawal of approval*

- 11 (1) If approval of a share incentive plan is withdrawn the Inland Revenue may by notice to a company direct that the benefit of—
- (a) any deductions under paragraph 2 (deduction for providing free or matching shares),
  - (b) any deductions under paragraph 3 (deduction for additional expenses in providing partnership shares),
  - (c) any deductions under paragraph 9 (deduction for contribution to plan trust) (in so far as not already withdrawn under paragraph 10), or
  - (d) any deductions under paragraph 10(3) (further deduction where deduction under paragraph 9 withdrawn),
- in relation to the plan is also withdrawn.
- (2) The effect of the direction is that the aggregate amount of the deductions is treated as a trading receipt of that company for the period of account in which the Inland Revenue give notice of the withdrawal of approval.

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*Termination of plan: shares acquired as mentioned in paragraph 9 but not yet awarded*

- 12 (1) This paragraph applies where the company has issued a plan termination notice under paragraph 89 of Schedule 2 to ITEPA 2003 (termination of plan).
- (2) In a case where—
- (a) by virtue of a payment made to the trustees by the company, the trustees acquire shares in the company, or a company which controls it,
  - (b) a deduction under paragraph 9 (deduction for contribution to plan trust) has been made in respect of that payment (and has not been withdrawn under paragraph 10), and
  - (c) not all the shares acquired by virtue of the payment have been awarded under the plan before issue of the plan termination notice,
- an amount equal to the appropriate proportion of the deduction is treated as a trading receipt of the company for the period of account in which the plan termination notice is given.
- (3) For the purposes of sub-paragraph (2), the appropriate proportion of the deduction is the proportion which the number of shares acquired by virtue of the payment and not awarded as specified in sub-paragraph (2)(c) bears to the total number of shares so acquired.

*Application of provisions to expenses of management of investment companies etc.*

- 13 (1) The provisions of this Schedule apply in relation to—
- (a) investment companies, and
  - (b) companies to which section 75 (expenses of management: investment companies) applies by virtue of section 76 (expenses of management: insurance companies),
- in accordance with the following provisions.
- (2) The provisions of this Schedule which allow a deduction in calculating the profits of a trade apply to treat amounts as disbursed as expenses of management.
- (3) Paragraph 11(2) applies as if the reference to a trading receipt for the period of account in which the Inland Revenue give notice of the withdrawal of approval were a reference to profits or gains chargeable to tax under Case VI of Schedule D arising when the Inland Revenue give notice of the withdrawal.”

110 Omit Schedules 6 and 6A (taxation of directors and others: cars and vans).

111 Omit Schedules 7 and 7A (taxation of benefit of loans).

112 (1) Amend Schedule 9 (approved share option schemes and profit sharing schemes) as follows.

(2) Omit Parts 1, 2 and 6 except so far as relating to profit sharing schemes.

(3) Omit Parts 3 and 4.

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- 113 (1) Amend Schedule 10 (further provisions relating to profit sharing schemes) as follows.
- (2) In paragraphs 3(1) and 6(4) for “charging an individual to income tax under Schedule E” substitute “under which an amount counts as employment income of an individual”.
- (3) In paragraph 7—
- (a) in sub-paragraph (1), for “a participant in the scheme is chargeable to income tax under Schedule E” substitute “an amount counts as employment income of the participant”;
  - (b) in sub-paragraph (6), for the words from “section 203” to “Schedule E” substitute “section 684 of ITEPA 2003 (PAYE regulations) and PAYE regulations as PAYE income payable to the recipient”;
  - (c) in sub-paragraph (7)(b)—
    - (i) omit second “to”, and
    - (ii) for “the participant is chargeable” substitute “is charged on the participant”.
- 114 Omit Schedule 11 (payments and other benefits in connection with termination of employment etc.).
- 115 Omit Schedule 11A (removal benefits and expenses).
- 116 Omit Schedule 12 (foreign earnings).
- 117 Omit Schedule 12AA (mileage allowances).
- 118 Omit Schedule 12A (ordinary commuting and private travel).
- 119 In Schedule 14 (modification of section 266 in certain cases), in paragraph 5 for “section 595” substitute “section 386 of ITEPA 2003 (payments to non-approved retirement benefits schemes)”.

F370 120 .....

#### Textual Amendments

**F370** Sch. 6 para. 120 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

- 121 (1) Amend paragraph 5B of Schedule 18 (group relief: equity holders and profits available for distribution) as follows.
- (2) In sub-paragraph (4)(d) for “approved under Schedule 9” substitute “which was approved”.
- (3) After sub-paragraph (4) insert—
- “(4A) In sub-paragraph (4)(d) above—
- “share option scheme” means—
- (a) an SAYE option scheme within the meaning of the SAYE code (see section 516(4) of ITEPA 2003 (approved SAYE option schemes)), or
  - (b) a CSOP scheme within the meaning of the CSOP code (see section 521(4) of that Act (approved CSOP schemes)); and

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“approved” means—

- (a) in relation to an SAYE option scheme, approved under Schedule 3 to that Act (approved SAYE option schemes), and
- (b) in relation to a CSOP scheme, approved under Schedule 4 to that Act (approved CSOP schemes).”

## PART 2

### OTHER ENACTMENTS

#### *Finance Act 1969 (c. 32)*

- 122 (1) Section 58 of the Finance Act 1969 (disclosure of information for statistical purposes by Board of Inland Revenue) is amended as follows.
- (2) In subsection (1)(a)—
- (a) for “section 203 of the Taxes Act 1988 (pay as you earn)” substitute “PAYE regulations”;
  - (b) for “emoluments to which that section applies” substitute “earnings or amounts treated as earnings from an employment”.
- (3) In subsection (1)(b) for “emoluments” substitute “earnings or amounts treated as earnings”.
- (4) After subsection (1) insert—
- “(1A) In subsection (1) “earnings or amounts treated as earnings” means earnings or amounts treated as earnings which constitute employment income (see section 7(2)(a) or (b) of the Income Tax (Earnings and Pensions) Act 2003).”

#### *Taxes Management Act 1970 (c. 9)*

- 123 The Taxes Management Act 1970 is amended as follows.
- 124 In section 7(4) and (5) (notice of liability to income tax and capital gains tax) for “section 203 of the principal Act” substitute “PAYE regulations”.
- 125 (1) Amend section 9 (returns to include self-assessment) as follows.
- (2) In subsection (1) for “, 547(5) or 599A(5) of the principal Act” substitute “or 547(5) of the principal Act or section 626 of ITEPA 2003”.
  - (3) In subsection (1A) after “the principal Act” insert “or under section 394(2) of ITEPA 2003”.
- 126 (1) Amend section 15 (return of employee’s emoluments etc.) as follows.
- (2) For the sidenote to the section substitute “Return of employees' earnings etc.”
  - (3) In subsection (3)(a) for “employment to which Chapter II of Part V of the principal Act applies” substitute “employment which, for the purposes of the benefits code in ITEPA 2003, is a taxable employment under Part 2 of that Act (see section 66) but is not an excluded employment (see section 63 of that Act)”.

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- (4) In subsection (8)(a) for “the relevant sections, that is to say, sections 141, 142, 143, 144A, 145, 146 and 154 to 165 of the principal Act” substitute “ the relevant provisions, that is to say, Chapters 4 to 10 of Part 3 and sections 222 and 223 of ITEPA 2003 ”.
- (5) In subsection (9)(a) for “the relevant sections” substitute “ the relevant provisions ”.
- (6) In subsection (11)—
- (a) for “the relevant sections”, in each place, substitute “ the relevant provisions ”; and
  - (b) in paragraph (a)(ii) for “section 141(3), 142(2), 145(3) or 156(8) of the principal Act” substitute “ section 328(1), 362, 363, 364 or 365 of ITEPA 2003 ”.
- (7) In subsection (13)—
- (a) in the definition of “employee”, for “whose emoluments fall to be assessed under Schedule E” substitute “ whose earnings are within the charge to tax under ITEPA 2003 ”; and
  - (b) for the definition of “the relevant sections” substitute—  
““the relevant provisions” has the meaning given by section (8)(a) above.”
- 127 For section 16A substitute—
- “16A Agency workers**
- (1) This section applies where—
- (a) any services which an individual provides or is obliged to provide under an agency contract are treated under section 44(2) of ITEPA 2003 as the duties of an office or employment held by him with the agency, or
  - (b) any remuneration receivable under or in consequence of arrangements falling within section 45 of that Act is treated as earnings from an office or employment held by an individual with the agency.
- (2) Where this section applies—
- (a) section 15 above shall apply as if the individual were employed by the agency, and
  - (b) section 16 above shall not apply to any payments made to the individual under or in consequence of the agency contract or the arrangements.
- (3) In this section “agency contract” and “remuneration” have the same meaning as in Chapter 7 of Part 2 of ITEPA 2003.”
- 128 In section 42(3) (procedure for making claims etc.) for “section 203 of the principal Act” substitute “ PAYE regulations ”.
- 129 In section 46B(5) (questions as to the application of provisions concerning the territorial sea to be determined by Special Commissioners) at the end of paragraph (b) insert—

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- “, or
- (c) section 41 of ITEPA 2003.”.
- 130 In section 59A (payments on account of income tax)—
- (a) in subsection (8)(b) for “section 203 of the principal Act” substitute “PAYE regulations ”; and
- (b) in subsection (10) for “Regulations under section 203 of the principal Act (PAYE)” substitute “PAYE regulations ”.
- 131 (1) Amend section 59B (payment of income tax and capital gains tax) as follows.
- (2) In subsection (1) for “, 547(5) or 599A(5) of the principal Act” substitute “ or 547(5) of the principal Act or section 626 of ITEPA 2003 ”.
- (3) In subsection (2)(a) for “section 203 of the principal Act” substitute “PAYE regulations ”.
- (4) In subsection (8) for “Regulations under section 203 of the principal Act (PAYE)” substitute “PAYE regulations ”.
- 132 In section 62(1A)(a) (priority of claim for tax)—
- (a) for “emoluments” substitute “taxable earnings (as defined by section 10 of ITEPA 2003) ”;
- (b) for “section 203 of the principal Act (pay as you earn)” substitute “PAYE regulations ”.
- 133 In section 63(3)(a) (recovery of tax in Scotland) for “section 203 of the principal Act (pay as you earn)” substitute “PAYE regulations ”.
- 134 In section 64(1A)(a) (priority of claim for tax in Scotland)—
- (a) for “emoluments” substitute “taxable earnings (as defined by section 10 of ITEPA 2003) ”;
- (b) for “section 203 of the principal Act (pay as you earn)” substitute “PAYE regulations ”.
- 135 (1) Amend section 70 (evidence) as follows.
- (2) In subsection (2)(a) for “or the principal Act” substitute “, the principal Act or ITEPA 2003 ”.
- (3) In subsection (4) for “emoluments” in both places where it occurs substitute “earnings or amounts treated as earnings ”.
- (4) After subsection (4) insert—
- “(5) In subsection (4) “earnings or amounts treated as earnings” means earnings or amounts treated as earnings which constitute employment income (see section 7(2)(a) or (b) of ITEPA 2003).”
- 136 In section 91(3)(c) (effect on interest of reliefs) for “section 203 of the principal Act” substitute “PAYE regulations ”.
- 137 (1) Amend the Table in section 98 (special returns, etc.) as follows.
- (2) Omit from the first column of the Table the entries relating to—
- (a) regulations under section 202 of ICTA;
- (b) paragraph 117 of Schedule 8 to FA 2000;



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(c) paragraph 64 of Schedule 14 to FA 2000.

(3) At the end of the first column of the Table insert the following entries—

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“Regulations under section 589 of ITEPA 2003.

Regulations under section 715 of ITEPA 2003.

Paragraph 93 of Schedule 2 to ITEPA 2003.

Paragraph 45 of Schedule 3 to ITEPA 2003.

Paragraph 33 of Schedule 4 to ITEPA 2003.

Paragraph 51 of Schedule 5 to ITEPA 2003.”

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(4) Omit from the second column of the Table the entries relating to—

(a) section 136(6) of ICTA;

(b) section 140G of ICTA;

(c) regulations under section 202 of ICTA;

(d) regulations under section 203 of ICTA;

(e) section 313(5) of ICTA;

(f) section 85(1) and (2) of FA 1988;

(g) paragraph 65 of Schedule 14 to FA 2000.

(5) At the end of the second column of the Table insert the following entries—

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|   |  |
|---|--|
| “ | Sections 432 and 433 of ITEPA 2003.          |
|   | Section 445 of ITEPA 2003.                   |
|   | Sections 465 and 466 of ITEPA 2003.          |
|   | Section 486 of ITEPA 2003.                   |
|   | Regulations under section 589 of ITEPA 2003. |
|   | Regulations under section 715 of ITEPA 2003. |
|   | PAYE regulations.                            |
|   | Paragraph 52 of Schedule 5 to ITEPA 2003.”   |

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138 In section 98A(1) (special penalties in the case of certain returns) for “Regulations under section 203(2) (PAYE) or” substitute “ PAYE regulations or regulations under section ”.

139 In section 118 (interpretation) after the entry relating to “inspector” insert—  
““ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003,”.

140 In section 119(4) (construction of the Act) after “1992 Act” insert “ and ITEPA 2003 ”.

141 In paragraph 4(1A) of Schedule 1A (claims etc. not included in returns) for “section 203 of the principal Act” substitute “ PAYE regulations ”.

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- 142 In paragraph 3 of Schedule 3 (rules for assigning proceedings to General Commissioners) for “regulations under section 203 of the principal Act” substitute “PAYE regulations”.
- 143 In Schedule 3A (electronic lodgement of tax returns etc.) in paragraph 2(4) (returns to which the Schedule applies) after “the principal Act” insert “or under ITEPA 2003”.

*Finance Act 1973 (c. 51)*

- 144 Schedule 15 to the Finance Act 1973 (territorial extension of charge to tax — supplementary provisions) is amended as follows.
- 145 In paragraph 2(b) for “emoluments” substitute “earnings or amounts treated as earnings which constitute employment income (see section 7(2)(a) or (b) of the Income Tax (Earnings and Pensions) Act 2003&”.
- 146 In paragraph 5 for “Schedule E” substitute “the Income Tax (Earnings and Pensions) Act 2003”.

*Finance Act 1974 (c. 30)*

- 147 In section 24 of the Finance Act 1974 (returns of persons treated as employees) for “any emoluments paid to him, whether or not tax is chargeable on them” substitute “any general earnings paid to him”.

*Interpretation Act 1978 (c. 30)*

- 148 In Schedule 1 to the Interpretation Act 1978 (words and expressions defined) after the definition of “Parliamentary election” insert—
- ““PAYE income” has the meaning given by section 683 of the Income Tax (Earnings and Pensions) Act 2003.
- “PAYE regulations” means regulations under section 684 of that Act.”

*Education (Scotland) Act 1980 (c. 44)*

- 149 In section 73B of the Education (Scotland) Act 1980 (grants and loans: Scotland)—
- (a) in subsection (3)(g) for “regulations under section 203 of the Income and Corporation Taxes Act 1988 (PAYE)” substitute “PAYE regulations”; and
- (b) in subsection (4) for “income assessable to income tax under Schedule E” substitute “PAYE income”.

*Inheritance Tax Act 1984 (c. 51)*

- 150 The Inheritance Tax Act 1984 is amended as follows.
- 151 (1) Amend the following provisions as provided in sub-paragraph (2)—
- (a) section 13(4)(c) (dispositions by close companies for benefit of employees),
- (b) section 72(4A) (property leaving employee trusts and newspaper trusts), and
- (c) section 86(3)(c) (trusts for benefit of employees).

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- (2) In each of those provisions, for “an employee share ownership plan approved under Schedule 8 to the Finance Act 2000” substitute “ a share incentive plan approved under Schedule 2 to the Income Tax (Earnings and Pensions) Act 2003 ”.
- 152 In section 14(1) (waiver of remuneration), for “would be assessable to income tax under Schedule E” substitute “ would be earnings, or would be treated as earnings, and would constitute employment income (see section 7(2)(a) or (b) of the Income Tax (Earnings and Pensions) Act 2003) ”.

*Bankruptcy (Scotland) Act 1985 (c. 66)*

- 153 In paragraph 1(1) of Schedule 3 to the Bankruptcy (Scotland) Act 1985 (preferred debts) for “section 203 of the Income and Corporation Taxes Act 1988 (pay as you earn)” substitute “ PAYE regulations ”.

*Insolvency Act 1986 (c. 45)*

- 154 In paragraph 1 of Schedule 6 to the Insolvency Act 1986 (the categories of preferential debts)—
- (a) for “emoluments” substitute “ taxable earnings (as defined by section 10 of the Income Tax (Earnings and Pensions) Act 2003) ”; and
  - (b) for “section 203 of the Income and Corporation Taxes Act 1988 (pay as you earn)” substitute “ PAYE regulations ”.

*Finance Act 1988 (c. 39)*

- 155 (1) Section 73 of the Finance Act 1988 (consideration for certain restrictive undertakings) is amended as follows.
- (2) In subsection (2) for “any sum to which section 313 of that Act applies” substitute “ any payment which is treated as earnings of an employee by virtue of section 225 of the Income Tax (Earnings and Pensions) Act 2003 (payments for restrictive undertakings) ”.
- (3) In subsection (3) for “Any sum to which section 313 of the Taxes Act 1988 applies” substitute “ Any payment which is treated as earnings of an employee by virtue of section 225 of the Income Tax (Earnings and Pensions) Act 2003 ”.

*Finance Act 1989 (c. 26)*

156 The Finance Act 1989 is amended as follows.

157 For section 43 substitute—

**“43 Schedule D: computation**

- (1) In calculating profits or gains of a trade to be charged under Schedule D for a period of account, no deduction is allowed for an amount charged in the accounts in respect of employees' remuneration, unless the remuneration is paid before the end of the period of 9 months immediately following the end of the period of account.
- (2) For the purposes of subsection (1) above an amount charged in the accounts in respect of employees' remuneration includes an amount—

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- (a) for which provision is made in the accounts, or
  - (b) which is held by an intermediary,
- with a view to its becoming employees' remuneration.
- (3) Subsection (1) above applies whether the amount is in respect of particular employments or in respect of employments generally.
- (4) If the remuneration is paid after the end of the period of 9 months mentioned in subsection (1) above, any deduction allowed in respect of it is allowed for the period of account in which it is paid and not for any other period of account.
- (5) If the profits of the trade are calculated before the end of the period of 9 months mentioned in subsection (1) above—
- (a) it must be assumed, in making the calculation, that any remuneration which is unpaid when the calculation is made will not be paid before the end of that period, but
  - (b) if the remuneration is subsequently paid before the end of that period, the calculation is adjusted if a claim to adjust it is made to an officer of the Board within 2 years beginning with the end of the period of account.
- (6) For the purposes of this section, remuneration is paid when it—
- (a) is treated as received by an employee for the purposes of the Income Tax (Earnings and Pensions) Act 2003 by section 18, 19, 31 or 32 of that Act (receipt of money and non-money earnings), or
  - (b) would be so treated if it were not exempt income.
- (7) In this section—
- “employee” includes an office-holder and “employment” correspondingly includes an office, and
  - “remuneration” means an amount which is or is treated as earnings for the purposes of the Income Tax (Earnings and Pensions) Act 2003.”

158 For section 44 substitute—

**“44 Investment and insurance companies: computation**

- (1) In calculating the profits of an investment company for a period of account, no deduction is allowed for an amount charged in the accounts in respect of employees' remuneration, unless the remuneration is paid before the end of the period of 9 months immediately following the end of the period of account.
- (2) For the purposes of subsection (1) above an amount charged in the accounts in respect of employees' remuneration includes an amount—
- (a) for which provision is made in the accounts, or
  - (b) which is held by an intermediary,
- with a view to its becoming employees' remuneration.
- (3) Subsection (1) above applies whether the amount is in respect of particular employments or in respect of employments generally.

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- (4) If the remuneration is paid after the end of the period of 9 months mentioned in subsection (1) above, any deduction allowed in respect of it is allowed for the period of account in which it is paid and not for any other period of account.
- (5) If the profits of the trade are calculated before the end of the period of 9 months mentioned in subsection (1) above—
- (a) it must be assumed, in making the calculation, that any remuneration which is unpaid when the calculation is made will not be paid before the end of that period, but
  - (b) if the remuneration is subsequently paid before the end of that period, the calculation is adjusted if a claim to adjust it is made to an officer of the Board by or on behalf of the company within 2 years beginning with the end of the period of account.
- (6) For the purposes of this section, remuneration is paid when it—
- (a) is treated as received by an employee for the purposes of the Income Tax (Earnings and Pensions) Act 2003 by section 18, 19, 31 or 32 of that Act (receipt of money and non-money earnings), or
  - (b) would be so treated if it were not exempt income.
- (7) Where the profits of a company carrying on life assurance business are not charged under Case I of Schedule D, this section shall apply in calculating the profits as it applies in calculating the profits of an investment company; and in any such case—
- (a) subsection (4) above shall have effect subject to section 86 below, and
  - (b) in construing section 86 below the remuneration shall be treated as expenses for the accounting period.
- (8) In this section—
- “employee” includes an office-holder and “employment” correspondingly includes an office,
  - “investment company” has the same meaning as in Part 4 of the Taxes Act 1988, and
  - “remuneration” means an amount which is or is treated as earnings for the purposes of Parts 2 to 7 of the Income Tax (Earnings and Pensions) Act 2003.”
- 159 In section 53(2)(f) (amendments consequential on the substitution of a new section 167 of ICTA) for “sections 332(2)(c) and 418(3)(a)” substitute “section 418(3)(a)”.
- 160 (1) Amend section 69 (chargeable events in relation to employee share ownership trusts) as follows.
- (2) In subsection (3AA)—
- (a) in paragraph (a) for “an employee share ownership” substitute “ a share incentive ”, and
  - (b) in paragraph (b) for “Schedule 8 to the Finance Act 2000” substitute “ Schedule 2 to the Income Tax (Earnings and Pensions) Act 2003 ”.

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- (3) In the definition of “market value” in subsection (3AC), for “in Schedule 8 to the Finance Act 2000” substitute “it has for the purposes of the SIP code (see paragraph 92 of Schedule 2 to the Income Tax (Earnings and Pensions) Act 2003) ”.
- (4) In subsection (4ZA)(b)—
- (a) for “a savings-related share option scheme within the meaning of Schedule 9 to the Taxes Act 1988” substitute “an SAYE option scheme within the meaning of the SAYE code (see section 516(4) of the Income Tax (Earnings and Pensions) Act 2003) ”, and
  - (b) in sub-paragraph (ii) for “that Schedule” substitute “Schedule 3 to that Act ”.
- 161 (1) Amend section 76 (non-approved retirement benefits schemes) as follows.
- (2) In subsection (6C)—
- (a) for “paragraphs (a), (b) or (c) of section 596(1) of the Taxes Act 1988” substitute “section 387(2) of the Income Tax (Earnings and Pensions) Act 2003 ”;
  - (b) for “emoluments” in the first place where it occurs substitute “earnings ”; and
  - (c) for “foreign emoluments within the meaning of section 192” substitute “earnings and amounts treated as earnings to which subsection (6D) applies ”.
- (3) After subsection (6C) insert—
- “(6D) This subsection applies to earnings and amounts treated as earnings for a year of assessment if—
- (a) the employer or office-holder is not domiciled in the United Kingdom in that year, and
  - (b) the employment is with a foreign employer.
- (6E) If there is a dispute as to whether the employee or office-holder is not domiciled in the United Kingdom, sections 42 and 43 of the Income Tax (Earnings and Pensions) Act 2003 (Board to determine dispute as to domicile) apply to the dispute as they apply to a dispute mentioned in section 42(1) of that Act.”
- (4) In subsection (7)—
- (a) after “this section” insert—
 

““earnings and amounts treated as earnings” means earnings and amounts treated as earnings which constitute employment income (see section 7(2)(a) or (b) of the Income Tax (Earnings and Pensions) Act 2003),

“foreign employer” has the meaning given by section 721 of that Act.”; and
  - (b) for “section 596(1)(a), (b) or (c) of the Taxes Act 1988” substitute “section 387(2) of the Income Tax (Earnings and Pensions) Act 2003 ”.
- 162 In section 178(2) (setting of rates of interest)—
- (a) in paragraph (m) omit the words “160,”,
  - (b) at the end of the first paragraph (p) omit the word “and”,
  - (c) renumber the second paragraph (p) as paragraph (q), and
  - (d) at the end of paragraph (r) insert “, and

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(s) Chapter 7 of Part 3 of the Income Tax (Earnings and Pensions) Act 2003.”.

163 (1) Amend Schedule 5 (employee share ownership trusts) as follows.

(2) In paragraph 4(2A) (beneficiaries)—

- (a) for “a savings-related share option scheme within the meaning of Schedule 9 to the Taxes Act 1988” substitute “ an SAYE option scheme ”, and
- (b) in paragraph (b), for “that Schedule” substitute “ Schedule 3 to the Income Tax (Earnings and Pensions) Act 2003 ”.

(3) In paragraph 9(2ZA)(b) (transfers of securities on qualifying terms)—

- (a) for “a savings-related share option scheme within the meaning of Schedule 9 to the Taxes Act 1988” substitute “ an SAYE option scheme ”, and
- (b) in sub-paragraph (ii), for “that Schedule” substitute “ Schedule 3 to the Income Tax (Earnings and Pensions) Act 2003 ”.

(4) In paragraph 10 (other features)—

- (a) for “savings-related share option schemes approved under Schedule 9 to the Taxes Act 1988” substitute “ SAYE option schemes approved under Schedule 3 to the Income Tax (Earnings and Pensions) Act 2003 ”; and
- (b) for “that Schedule” substitute “ Schedule 9 to the Taxes Act 1988 ”.

(5) After paragraph 17 insert—

“18 For the purposes of this Schedule “SAYE option scheme” has the same meaning as in the SAYE code (see section 516 of the Income Tax (Earnings and Pensions) Act 2003 (approved SAYE option schemes)).”

*Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19))*

164 In paragraph 1 of Schedule 4 to the Insolvency (Northern Ireland) Order 1989 (the categories of preferential debts)—

- (a) in sub-paragraph (1), for “emoluments” substitute “ taxable earnings (as defined by section 10 of the Income Tax (Earnings and Pensions) Act 2003) ”; and
- (b) in sub-paragraph (2), for “section 203 of the Income and Corporation Taxes Act 1988 (pay as you earn)” substitute “ regulations made under section 684 of that Act (PAYE regulations) ”.

*Finance Act 1990 (c. 29)*

165 The Finance Act 1990 is amended as follows.

166 (1) Amend section 25(2) (donations to charity by individuals) as follows.

(2) In paragraph (d) for “section 202(2) of the Taxes Act 1988” substitute “ section 713(3) of the Income Tax (Earnings and Pensions) Act 2003 ”.

<sup>F371</sup>(3) .....

**Textual Amendments**

**F371** Sch. 6 para. 166(3) repealed (22.7.2004) by Finance Act 2004 (c. 12), Sch. 42 Pt. 2(12)

*Status: Point in time view as at 07/04/2005.*

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- 167 (1) Amend paragraph 4 of Schedule 14 (amendments of sections 322 and 323 of ICTA) as follows.
- (2) In sub-paragraph (1) for “sections 322(1)(a) and (2) and 323(1)” substitute “section 322(1)(a)”.
- (3) Omit sub-paragraph (2).

*Finance Act 1991 (c. 31)*

- 168 (1) Amend section 38 of the Finance Act 1991 (employee share schemes: non-discrimination) as follows.
- (2) Omit subsection (2).
- (3) In subsection (6) for “Subsections (2) and” substitute “ Subsection ”.

*Social Security Contributions and Benefits Act 1992 (c. 4)*

- 169 The Social Security Contributions and Benefits Act 1992 is amended as follows.
- 170 In section 1 (outline of contributory system), in subsection (2)(bb) for “emoluments” substitute “ general earnings ”.
- 171 In section 2 (categories of earners), in subsection (1)(a) for “emoluments chargeable to income tax under Schedule E” substitute “ general earnings ”.
- 172 (1) Amend section 4 (payments treated as remuneration and earnings) as follows.
- (2) For subsection (4)(a) substitute—
- “(a) the amount of any gain calculated under section 479 or 480 of ITEPA 2003 in respect of which an amount counts as employment income of the earner under section 476 or 477 of that Act (charge on exercise, assignment or release of share option);”.
- (3) In subsection (4)(b) for “section 313 of the 1988 Act” substitute “ section 225 or 226 of ITEPA 2003 ”.
- (4) In subsection (6)(a) for “Schedule E” substitute “ the employment income Parts of ITEPA 2003 ”.
- 173 In section 7(1)(b) (meaning of “secondary contributor”) for “emoluments” in both places where it occurs substitute “ general earnings ”.
- 174 (1) Amend section 10 (Class 1A National Insurance contributions: benefits in kind etc.) as follows.
- (2) For subsection (1)(a) substitute—
- “(a) for any tax year an earner is chargeable to income tax under ITEPA 2003 on an amount of general earnings received by him from any employment (“the relevant employment”),”.
- (3) For subsection (1)(b) substitute—
- “(b) the relevant employment is both—
- (i) employed earner’s employment, and



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- (ii) an employment, other than an excluded employment, within the meaning of the benefits code (see Chapter 2 of Part 3 of ITEPA 2003),”.
- (4) In subsection (1)(c) for “emolument” substitute “ general earnings ”.
- (5) In subsection (1) in the words after paragraph (c) for “emolument” substitute “ general earnings ”.
- (6) In subsection (2)(b) for “emolument” substitute “ general earnings ”.
- (7) In subsection (4)—
- (a) for “emolument” substitute “ general earnings ”;
  - (b) for “it” substitute “ them ”.
- (8) In subsection (6) for “emolument as is taken” substitute “ general earnings as are taken ”.
- (9) For subsection (7) substitute—
- “(7) In calculating for the purposes of this section the amount of general earnings received by an earner from an employment, a deduction under any of the excluded provisions is to be disregarded.
- This subsection does not apply in relation to a deduction if subsection (7A) applies in relation to it.
- (7A) Where—
- (a) a deduction in respect of a matter is allowed under an excluded provision, and
  - (b) the amount deductible is at least equal to the whole of any corresponding amount which would (but for this section) fall by reference to that matter to be included in the general earnings mentioned in subsection (7),
- the whole of the corresponding amount shall be treated as not included.
- (7B) For the purposes of subsections (7) and (7A) “excluded provision” means—
- (a) any provision of Chapter 2 of Part 5 of ITEPA 2003 (deductions for employee’s expenses), other than section 352 (limited deduction for agency fees paid by entertainers), and
  - (b) any provision of Chapter 5 of Part 5 of ITEPA 2003 (deductions for earnings representing benefits or reimbursed expenses).”
- (10) For subsection (8)(a) substitute—
- “(a) modify the effect of subsections (7) and (7A) above by amending subsection (7B) so as to include any enactment contained in the Income Tax Acts within the meaning of “excluded provision”; or”.
- (11) In subsection (8)(b)—
- (a) for “subsection (7)” substitute “ subsections (7) to (7B) ”;
  - (b) for “under Schedule E” substitute “ on employment income ”.
- (12) In subsection (9)(a) for “emoluments” substitute “ general earnings ”.
- (13) Omit subsection (10).

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- 175 (1) Amend section 10ZA (liability of third party provider of benefits in kind) as follows.
- (2) In subsection (1)(a) for “an emolument” substitute “ general earnings ”.
- (3) Amend subsection (1)(b) as follows—
- (a) for “the emolument, in so far as it is one in respect of which” substitute “ the general earnings, in so far as they are ones in respect of which ”;
- (b) for “consists” substitute “ consist ”.
- (4) In subsection (2), in the words after paragraph (b) for “an emolument” substitute “ general earnings ”.
- (5) In subsection (6) for “section 168(4) of the Income and Corporation Taxes Act 1988” substitute “ section 721(5) of ITEPA 2003 ”.
- 176 (1) Amend section 10ZB (non-cash vouchers provided by third parties) as follows.
- (2) In subsection (2)(a) for the words from “employment” to the end of the paragraph substitute “ employment which is an excluded employment for the purposes of the benefits code, and ”.
- (3) In subsection (2)(b) for “if that Chapter did apply to that employment” substitute “ if that employment were not an excluded employment ”.
- (4) In subsection (2), in the words following paragraph (b) for “as if that employment were employment to which that Chapter applied” substitute “ as if that employment were not an excluded employment ”.
- (5) In subsection (3) for “section 141 of the Income and Corporation Taxes Act 1988” substitute “ section 84 of ITEPA 2003 ”.
- 177 (1) Amend section 10A (Class 1B National Insurance contributions) as follows.
- (2) In subsection (1) for “emoluments” substitute “ general earnings ”.
- (3) In subsection (2)(a) for “the emoluments included” substitute “ the general earnings included ”.
- (4) In subsection (4) for “Emoluments are chargeable emoluments” substitute “ General earnings are chargeable emoluments ”.
- (5) In subsection (5) for “emoluments” in both places where it occurs substitute “ general earnings ”.
- 178 (1) Amend section 122(1) (interpretation of Parts 1 to 6 and supplementary provisions) as follows.
- (2) Insert the following definitions in the appropriate places—
- ““the benefits code” has the meaning given by section 63(1) of ITEPA 2003;”
- ““the employment income Parts of ITEPA 2003” means Parts 2 to 7 of that Act;”
- ““excluded employment” has the meaning given by section 63(4) of ITEPA 2003;”

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““general earnings” has the meaning given by section 7 of ITEPA 2003 and accordingly sections 3 and 112 of this Act do not apply in relation to the word “earnings” when used in the expression “general earnings”;

““ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003;”.

- (3) In the definition of “PAYE settlement agreement” for “section 206A of the Income and Corporation Taxes Act 1988” substitute “ Chapter 5 of Part 11 of ITEPA 2003 ”.
- 179 In section 126(5)(a)(ii) (trade disputes) for “emoluments in pursuance of section 203 of the Income and Corporation Taxes Act 1988 (PAYE)” substitute “ taxable earnings (as defined by section 10 of the Income Tax (Earnings and Pensions) Act 2003) under PAYE regulations ”.
- 180 (1) Amend section 150(2) (interpretation of Part 10) as follows.
- (2) In paragraph (b) of the definition of “unemployability supplement or allowance”—
- (a) in sub-paragraph (ii) for “section 315(1) of the Income and Corporation Taxes Act 1988” substitute “ section 641 of the Income Tax (Earnings and Pensions) Act 2003 ”;
- (b) omit sub-paragraph (v).
- (3) In paragraph (b) of the definition of “war disablement pension” for “subsection (1) of section 315 of the Income and Corporation Taxes Act 1988” substitute “ any of paragraphs (a) to (f) of section 641(1) of the Income Tax (Earnings and Pensions) Act 2003 ”.
- (4) In the definition of “war widow’s pension” for “subsection (2)(e) of the said section 315” substitute “ section 641(1)(e) or (f) of the Income Tax (Earnings and Pensions) Act 2003 ”.
- 181 In section 163(1) (interpretation of Part 11), in paragraph (a) of the definition of “employee” for “emoluments chargeable to income tax under Schedule E” substitute “ general earnings (as defined by section 7 of the Income Tax (Earnings and Pensions) Act 2003) ”.
- 182 In section 171(1) (interpretation of Part 12), in paragraph (a) of the definition of “employee” for “emoluments chargeable to income tax under Schedule E” substitute “ general earnings (as defined by section 7 of the Income Tax (Earnings and Pensions) Act 2003) ”.
- 183 In section 171ZJ(2)(a) (Part 12ZA: supplementary) for “emoluments chargeable to income tax under Schedule E” substitute “ general earnings (as defined by section 7 of the Income Tax (Earnings and Pensions) Act 2003) ”.
- 184 In section 171ZS(2)(a) (Part 12ZB: supplementary) for “emoluments chargeable to income tax under Schedule E” substitute “ general earnings (as defined by section 7 of the Income Tax (Earnings and Pensions) Act 2003) ”.
- 185 In Schedule 1 (supplementary provisions relating to contributions of Classes 1, 1A, 1B, 2 and 3)—
- (a) in paragraph 6(1)(a) for “regulations under section 203 of the Income and Corporation Taxes Act 1988 (PAYE)” substitute “ PAYE regulations ”;
- (b) in paragraph 6(1)(b) for “regulations under that section” substitute “ PAYE regulations ”;

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- (c) in paragraph 6(7) for “regulations made under section 203 of the Income and Corporation Taxes Act 1988 (PAYE)” substitute “ PAYE regulations ”;
- (d) in paragraph 7(1)(a) for “regulations made by the Inland Revenue under section 203(2) or” substitute “ PAYE regulations or regulations made under section ”; and
- (e) in paragraph 7B(1) for “regulations under section 203 of the Income and Corporation Taxes Act 1988 (PAYE)” substitute “ PAYE regulations ”.

*Social Security Administration Act 1992 (c. 5)*

186 The Social Security Administration Act 1992 is amended as follows.

187 (1) Amend section 139(11) (definitions used in provisions relating to arrangements for council tax benefit) as follows.

(2) In paragraph (b) of the definition of “war disablement pension” for “subsection (1) of section 315 of the Income and Corporation Taxes Act 1988” substitute “ any of paragraphs (a) to (f) of section 641(1) of the Income Tax (Earnings and Pensions) Act 2003 ”.

(3) In the definition of “war widow’s pension” for “section 315(2)(e) of the Income and Corporation Taxes Act 1988” substitute “ section 641(1)(e) or (f) of the Income Tax (Earnings and Pensions) Act 2003 ”.

188 (1) Amend section 159B(6) (effect of alterations affecting state pension credit) as follows.

(2) In paragraph (b) of the definition of “war disablement pension” for “subsection (1) of section 315 of the Income and Corporation Taxes Act 1988 (c. 1)” substitute “ any of paragraphs (a) to (f) of section 641(1) of the Income Tax (Earnings and Pensions) Act 2003 ”.

(3) In paragraph (b) of the definition of “war widow’s or widower’s pension” for “section 315(2)(e) of the Income and Corporation Taxes Act 1988” substitute “ section 641(1)(e) or (f) of the Income Tax (Earnings and Pensions) Act 2003 ”.

189 (1) Amend section 162(5) (destination of national insurance contributions) as follows.

(2) In paragraph (c) for “emoluments” substitute “ general earnings ”.

(3) In paragraph (ca) for “emoluments” substitute “ general earnings ”.

*Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7)*

190 The Social Security Contributions and Benefits (Northern Ireland) Act 1992 is amended as follows.

191 In section 1 (outline of contributory system), in subsection (2)(bb) for “emoluments” substitute “ general earnings ”.

192 In section 2 (categories of earners), in subsection (1)(a) for “emoluments chargeable to income tax under Schedule E” substitute “ general earnings ”.

193 (1) Amend section 4 (payments treated as remuneration and earnings) as follows.

(2) For subsection (4)(a) substitute—

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- “(a) the amount of any gain calculated under section 479 or 480 of ITEPA 2003 in respect of which an amount counts as employment income of the earner under section 476 or 477 of that Act (charge on exercise, assignment or release of share option);”.
- (3) In subsection (4)(b) for “section 313 of the 1988 Act” substitute “ section 225 or 226 of ITEPA 2003 ”.
- (4) In subsection (6)(a) for “Schedule E” substitute “ the employment income Parts of ITEPA 2003 ”.
- 194 In section 7(1)(b) (meaning of “secondary contributor”) for “emoluments” in both places where it occurs substitute “ general earnings ”.
- 195 (1) Amend section 10 (Class 1A National Insurance contributions: benefits in kind etc.) as follows.
- (2) For subsection (1)(a) substitute—
- “(a) for any tax year an earner is chargeable to income tax under ITEPA 2003 on an amount of general earnings received by him from any employment (“the relevant employment”),”.
- (3) For subsection (1)(b) substitute—
- “(b) the relevant employment is both—
- (i) employed earner’s employment, and
- (ii) an employment, other than an excluded employment, for the purposes of the benefits code (see Chapter 2 of Part 3 of ITEPA 2003),”.
- (4) In subsection (1)(c) for “emolument” substitute “ general earnings ”.
- (5) In subsection (1), in the words after paragraph (c) for “emolument” substitute “ general earnings ”.
- (6) In subsection (2)(b) for “emolument” substitute “ general earnings ”.
- (7) In subsection (4)—
- (a) for “emolument” substitute “ general earnings ”;
- (b) for “it” substitute “ them ”.
- (8) In subsection (6) for “emolument” substitute “ general earnings ”.
- (9) For subsection (7) substitute—
- “(7) In calculating for the purposes of this section the amount of general earnings received by an earner from an employment, a deduction under any of the excluded provisions is to be disregarded.
- This subsection does not apply in relation to a deduction if subsection (7A) applies in relation to it.
- (7A) Where—
- (a) a deduction in respect of a matter is allowed under an excluded provision, and
- (b) the amount deductible is at least equal to the whole of any corresponding amount which would (but for this section) fall by

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- reference to that matter to be included in the general earnings mentioned in subsection (7),  
the whole of the corresponding amount shall be treated as not included.
- (7B) For the purposes of subsections (7) and (7A) “excluded provision” means—
- (a) any provision of Chapter 2 of Part 5 of ITEPA 2003 (deductions for employee’s expenses) other than section 352 (limited deduction for agency fees paid by entertainers), and
  - (b) any provision of Chapter 5 of Part 5 of ITEPA 2003 (deductions for earnings representing benefits or reimbursed expenses).”
- (10) For subsection (8)(a) substitute—
- “(a) modify the effect of subsections (7) and (7A) above by amending subsection (7B) so as to include any enactment contained in the Income Tax Acts within the meaning of “excluded provision”; or”.
- (11) In subsection (8)(b)—
- (a) for “subsection (7)” substitute “ subsections (7) to (7B) ”;
  - (b) for “under Schedule E” substitute “ on employment income ”.
- (12) In subsection (9)(a) for “emoluments” substitute “ general earnings ”.
- (13) Omit subsection (10).
- 196 (1) Amend section 10ZA (liability of third party provider of benefits in kind) as follows.
- (2) In subsection (1)(a) for “an emolument” substitute “ general earnings ”.
  - (3) Amend subsection (1)(b) as follows—
    - (a) for “the emolument, in so far as it is one in respect of which” substitute “ the general earnings, in so far as they are ones in respect of which ”;
    - (b) for “consists” substitute “ consist ”.
  - (4) In subsection (2), in the words after paragraph (b) for “an emolument” substitute “ general earnings ”.
  - (5) In subsection (6) for “section 168(4) of the Income and Corporation Taxes Act 1988” substitute “ section 721(5) of ITEPA 2003 ”.
- 197 (1) Amend section 10ZB (non-cash vouchers provided by third parties) as follows.
- (2) In subsection (2)(a) for the words from “employment” to the end of the paragraph substitute “ employment which is an excluded employment for the purposes of the benefits code, and ”.
  - (3) In subsection (2)(b) for “if that Chapter did apply to that employment” substitute “ if that employment were not an excluded employment ”.
  - (4) In subsection (2), in the words following paragraph (b) for “as if that employment were employment to which that Chapter applied” substitute “ as if that employment were not an excluded employment ”.
  - (5) In subsection (3) for “section 141 of the Income and Corporation Taxes Act 1988” substitute “ section 84 of ITEPA 2003 ”.
- 198 (1) Amend section 10A (Class 1B National Insurance contributions) as follows.
- (2) In subsection (1) for “emoluments” substitute “ general earnings ”.

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- (3) In subsection (2)(a) for “the emoluments included” substitute “ the general earnings included ”.
- (4) In subsection (4) for “Emoluments are chargeable emoluments” substitute “ General earnings are chargeable emoluments ”.
- (5) In subsection (5) for “emoluments” in both places where it occurs substitute “ general earnings ”.
- 199 (1) Amend section 121(1) (interpretation of Parts 1 to 6 and supplementary provisions) as follows.
- (2) Insert the following definitions in the appropriate places—
- ““the benefits code” has the meaning given by section 63(1) of ITEPA 2003;”
- ““the employment income Parts of ITEPA 2003” means Parts 2 to 7 of that Act;”
- ““excluded employment” has the meaning given by section 63(4) of ITEPA 2003;”
- ““general earnings” has the meaning given by section 7 of ITEPA 2003 and accordingly sections 3 and 112 of this Act do not apply in relation to the word “earnings” when used in the expression “general earnings”;”
- ““ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003;”.
- (3) In the definition of “PAYE settlement agreement” for “section 206A of the Income and Corporation Taxes Act 1988” substitute “ Chapter 5 of Part 11 of ITEPA 2003 ”.
- 200 In section 125(5)(a)(ii) (trade disputes) for “emoluments in pursuance of section 203 of the Income and Corporation Taxes Act 1988 (PAYE)” substitute “ taxable earnings (as defined by section 10 of the Income Tax (Earnings and Pensions) Act 2003) under PAYE regulations ”.
- 201 (1) Amend section 146(2) (interpretation of Part 10) as follows.
- (2) In paragraph (b) of the definition of “unemployability supplement or allowance”—
- (a) in sub-paragraph (ii) for “section 315(1) of the Income and Corporation Taxes Act 1988” substitute “ section 641 of the Income Tax (Earnings and Pensions) Act 2003 ”;
- (b) omit sub-paragraph (v).
- (3) In paragraph (b) of the definition of “war disablement pension”, for “subsection (1) of section 315 of the Income and Corporation Taxes Act 1988” substitute “ any of paragraphs (a) to (f) of section 641(1) of the Income Tax (Earnings and Pensions) Act 2003 ”.
- (4) In the definition of “war widow’s pension” for “subsection (2)(e) of the said section 315” substitute “ section 641(1)(e) or (f) of the Income Tax (Earnings and Pensions) Act 2003 ”.
- 202 In section 159(1) (interpretation of Part 11), in paragraph (a) of the definition of “employee” for “emoluments chargeable to income tax under Schedule E”

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- substitute “ general earnings (as defined by section 7 of the Income Tax (Earnings and Pensions) Act 2003 )”.
- 203 In section 167(1) (interpretation of Part 12), in paragraph (a) of the definition of “employee” for “emoluments chargeable to income tax under Schedule E” substitute “ general earnings (as defined by section 7 of the Income Tax (Earnings and Pensions) Act 2003 )”.
- 204 In Schedule 1 (supplementary provisions relating to contributions of Classes 1, 1A, 1B, 2 and 3)—
- (a) in paragraph 6(1)(a) for “regulations under section 203 of the Income and Corporation Taxes Act 1988 (PAYE)” substitute “ PAYE regulations ”;
  - (b) in paragraph 6(1)(b) for “regulations under that section” substitute “ PAYE regulations ”;
  - (c) in paragraph 6(7) for “regulations made under section 203 of the Income and Corporation Taxes Act 1988 (PAYE)” substitute “ PAYE regulations ”;
  - (d) in paragraph 7(1)(a) for “regulations made by the Inland Revenue under section 203(2) or” substitute “ PAYE regulations or regulations made under section ”; and
  - (e) in paragraph 7B(1) for “regulations under section 203 of the Income and Corporation Taxes Act 1988 (PAYE)” substitute “ PAYE regulations ”.

*Social Security Administration (Northern Ireland) Act 1992 (c. 8)*

- 205 (1) Section 139B(6) of the Social Security Administration (Northern Ireland) Act 1992 (effect of alterations affecting state pension credit) is amended as follows.
- (2) b) of the definition of “war disablement pension” for “subsection (1) of section 315 of the Income and Corporation Taxes Act 1988 (c. 1)” substitute “ any of paragraphs (a) to (f) of section 641(1) of the Income Tax (Earnings and Pensions) Act 2003 ”.
  - (3) In paragraph (b) of the definition of “war widow’s or widower’s pension” for “section 315(2)(e) of the Income and Corporation Taxes Act 1988” substitute “ section 641(1)(e) or (f) of the Income Tax (Earnings and Pensions) Act 2003 ”.
- 206 In section 142(5) of that Act (destination of national insurance contributions)—
- (a) in paragraph (c) for “emoluments” substitute “ general earnings ”;
  - (b) in paragraph (ca) for “emoluments” substitute “ general earnings ”

*Taxation of Chargeable Gains Act 1992 (c. 12)*

- 207 The Taxation of Chargeable Gains Act 1992 is amended as follows.
- 208 In section 9(2) (residence, including temporary residence)—
- (a) for “Section 207 of the Taxes Act” substitute “ Sections 42 and 43 of ITEPA 2003 ”;
  - (b) for “it applies” substitute “ they apply ”; and
  - (c) for “that section” substitute “ section 42 of that Act ”.
- 209 In section 11(1) (visiting forces, agents-general etc.)—
- (a) for “section 323(1) of the Taxes Act” substitute “ section 303(1) of ITEPA 2003 ”; and



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- (b) for “subsection (2) of section 323 and subsections (4) to (8) of that section shall apply accordingly” substitute “ section 303(2) to (6) of that Act and section 323(2) of the Taxes Act ”.
- 210 (1) Amend section 120 (increased expenditure by reference to tax charged in relation to shares etc.) as follows.
- (2) For subsection (1) substitute—
- “ (1) Subsection (1A) applies where—
- (a) a person (“the employee”) has acquired shares or an interest in shares as mentioned in section 447(1) of ITEPA 2003, and
- (b) an amount counts as employment income of the employee under Chapter 4 of Part 7 of that Act in respect of the shares.
- (1A) On the first disposal of the shares after the acquisition occurs, the employment income amount shall be treated for the purposes of section 38(1) (a) as consideration given by the person making the disposal for the acquisition of the shares.
- (1B) For the purposes of subsections (1) and (1A)—
- (a) the “employment income amount” means the amount counting as employment income of the employee under that Chapter in respect of the shares, and
- (b) it is immaterial whether the disposal of the shares mentioned in subsection (1A) is made by the employee or another person.”
- (3) In subsection (3)—
- (a) for “is chargeable to tax by virtue of section 162(5) of the Taxes Act” substitute “ is treated as earnings under section 195(2) of ITEPA 2003 ”, and
- (b) for “so chargeable” substitute “ so treated as earnings ”.
- (4) In subsection (4)—
- (a) for “chargeable to tax under section 135(1) or (6) of the Taxes Act” substitute “ counting as employment income under section 476 or 477 of ITEPA 2003 ”, and
- (b) for “so chargeable to tax” substitute “ so counting as employment income ”.
- (5) In subsection (5A)—
- (a) for “is chargeable to tax under section 140A of the Taxes Act” substitute “ counts as employment income under Chapter 2 of Part 7 of ITEPA 2003 ”, and
- (b) for “so chargeable” substitute “ so counting as employment income ”.
- (6) In subsection (5B)—
- (a) for “is chargeable to tax under section 140D of the Taxes Act” substitute “ counts as employment income under Chapter 3 of Part 7 of ITEPA 2003 ”, and
- (b) for “so chargeable” substitute “ so counting as employment income ”.
- (7) Omit subsection (6).
- (8) For subsection (7) substitute—

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“(7) Each of the provisions of this section mentioned in the first column of the following table is to be construed as if it were contained in the Chapter of ITEPA 2003 specified in the corresponding entry in the second column—

| <i>Provision of this section</i> | <i>Chapter of ITEPA 2003</i> |
|----------------------------------|------------------------------|
| subsections (1), (1A) and (1B)   | Chapter 4 of Part 7          |
| subsection (3)                   | Chapter 8 of Part 3          |
| subsection (4)                   | Chapter 5 of Part 7          |
| subsection (5A)                  | Chapter 2 of Part 7          |
| subsection (5B)                  | Chapter 3 of Part 7;         |

and subsection (5) of this section is to be construed as one with section 138 of the Taxes Act.”

(9) After subsection (7) insert—

“(7A) In relation to events that gave rise to amounts chargeable to income tax before 6th April 2003, this section is to be read as if any reference to an amount mentioned in the first column of the following table included a reference to an amount mentioned in the corresponding entry in the second column—

| <i>Amount mentioned in this section</i>   | <i>Amount chargeable before 6th April 2003</i>                                |
|---|---|
| an amount counting as employment income under Chapter 4 of Part 7 of ITEPA 2003     | an amount chargeable to tax under Chapter 2 of Part 3 of the Finance Act 1988 |
| an amount treated as earnings under section 195(2) of ITEPA 2003                    | an amount chargeable to tax under section 162(5) of the Taxes Act             |
| an amount counting as employment income under section 476 or 477 of ITEPA 2003      | an amount chargeable to tax under section 135(1) or (6) of the Taxes Act      |
| an amount which counts as employment income under Chapter 2 of Part 7 of ITEPA 2003 | an amount chargeable to tax under section 140A of the Taxes Act               |
| an amount which counts as employment income under Chapter 3 of Part 7 of ITEPA 2003 | an amount chargeable to tax under section 140D of the Taxes Act.”             |

(10) In subsection (8) for “section 140A of the Taxes Act” substitute “ Chapter 2 of Part 7 of ITEPA 2003 ”.

211 (1) Amend section 149B (employee incentive schemes: conditional interests in shares) as follows.

(2) In subsection (1) for “section 140A of the Taxes Act” substitute “ Chapter 2 of Part 7 of ITEPA 2003 (conditional interests in shares) ”.

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(3) In subsection (2) for “section 140B of the Taxes Act” substitute “ section 429 of ITEPA 2003 ”.

(4) In subsection (4)—

(a) for “section 140A of the Taxes Act” substitute “ Chapter 2 of Part 7 of ITEPA 2003 ”, and

(b) for “that section” substitute “ that Chapter ”.

212 After section 149B insert—

#### “149C Priority share allocations

Section 17(1) shall not apply to an acquisition of shares if section 542 or 544 of ITEPA 2003 applies in relation to it.”

213 In section 222(8D)(b) (relief on disposal of private residence), for “the same meanings as they have for the purposes of Chapter II of Part V of the Taxes Act” substitute “ the meanings given by Chapter 2 of Part 3 of ITEPA 2003 ”.

214 In section 236A (employee share ownership plans), and in the sidenote and in the italic heading immediately before the section, for “employee share ownership” wherever it occurs substitute “ share incentive ”.

215 In section 238(2)(a) (approved profit sharing and share option schemes), for “is chargeable to income tax” substitute “ counts as employment income (or was chargeable to income tax for the year 2002-03 or an earlier year of assessment ”.

216 After section 238 insert—

#### “238A Approved share schemes and share incentives

(1) Schedule 7D (approved share schemes and share incentives) shall have effect.

(2) Schedule 7D relates—

(a) in Part 1, to approved share incentive plans (SIPs) (see section 488 of ITEPA 2003),

(b) in Part 2, to approved SAYE option schemes (see section 516 of that Act),

(c) in Part 3, to approved CSOP schemes (CSOPs) (see section 521 of that Act), and

(d) in Part 4, to enterprise management incentives (see section 527 of that Act).”

217 After section 263 insert—

#### “263ZA Former employees: employment-related liabilities

(1) This section applies if—

(a) a deduction of the amount of one or more deductible payments may be made under section 555 of ITEPA 2003 (former employee entitled to deduction from total income in respect of liabilities related to the former employment) when computing a former employee’s total income for a tax year, and

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- (b) the total amount which may be deducted exceeds the total income for that year.
- (2) In this section “excess relief” means the amount of the difference between—
- (a) the total amount which may be deducted, and
  - (b) the total income.
- (3) The amount of the excess relief may be treated as an allowable loss accruing to the former employee for that tax year.
- This subsection applies only if the former employee makes a claim for the purpose.
- (4) But no relief is available under subsection (3) in respect of any amount of the excess relief that exceeds the maximum amount.
- (5) For the purposes of this section the “maximum amount”, in relation to the excess relief for a tax year, means the amount on which the former employee would be chargeable to capital gains tax for that year if the following were disregarded—
- (a) any relief available under this section,
  - (b) any allowable losses falling to be carried forward to that year from a previous year for the purposes of section 2(2),
  - (c) section 3(1) (the annual exempt amount),
  - (d) any relief against capital gains tax under section 72 of the Finance Act 1991 (deduction of trading losses), and
  - (e) any relief against capital gains tax under section 90(4) of the Finance Act 1995 (relief for post-cessation expenditure).
- (6) A former employee may make a claim under subsection (3) and a claim under section 555(3) of ITEPA 2003 in the same notice.”
- 218 In section 271 (other miscellaneous exemptions), for subsection (1)(c) substitute—
- “(c) any gain accruing to a person from his acquisition and disposal of assets held by him as part of a fund—
- (i) mentioned in section 614(2) of the Taxes Act,
  - (ii) to which section 615(3) of the Taxes Act applies, or
  - (iii) mentioned in section 648, 649, 650, 651 or 653 of ITEPA 2003;”.

219 (1) Amend section 288(1) (interpretation) as follows.

(2) In the entry relating to “allowable loss” for “and 16” substitute “ , 16 and 263ZA ”.

(3) After the entry relating to “investment trust” insert—

““ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003;”.

220 (1) Amend Schedule 7C (relief for transfers to approved share plans) as follows.

(2) In paragraph 1(1) (introductory) for “an employee share ownership” substitute “ a share incentive ”.

(3) In paragraph 2 (conditions relating to the disposal)—

*Status:* Point in time view as at 07/04/2005.

**Changes to legislation:** *Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 23 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) in sub-paragraph (1) for “Schedule 8 to the Finance Act 2000” substitute “Schedule 2 to ITEPA 2003 ”,
- (b) in sub-paragraph (2)—
  - (i) for “Part VIII” substitute “ Part 4 ”,
  - (ii) for “used in plan” substitute “ awarded ”, and
  - (iii) for “61(a) and (c)” substitute “ 27(1)(a) and (c) and (2) ”,
- (c) in sub-paragraph (4) for “of Schedule 8 to the Finance Act 2000” substitute “ given by paragraph 97 of Schedule 2 to ITEPA 2003 ”.

221 After Schedule 7C insert—

“SCHEDULE  
7D

Section 238A

APPROVED SHARE SCHEMES AND SHARE INCENTIVES

**PART 1**

APPROVED SHARE INCENTIVE PLANS

*Introductory*

- 1 (1) The provisions of this Part of this Schedule apply for capital gains tax purposes in relation to an approved share incentive plan (“the plan”).
- (2) This Part of this Schedule forms part of the SIP code (see section 488 of ITEPA 2003 (approved share incentive plans)).
- (3) Accordingly, expressions used in this Part of this Schedule and contained in the index at the end of Schedule 2 to that Act (approved share incentive plans) have the meaning indicated by the index.
- (4) In particular, for the purposes of paragraphs 5 and 7 of this Schedule “market value” has the meaning given by paragraph 92 of Schedule 2 to that Act (determination of market value); and Part 8 of this Act has effect subject to this paragraph.

*Gains accruing to trustees*

- 2 (1) Any gain accruing to the trustees is not a chargeable gain if the shares—
  - (a) are shares in relation to which the requirements of Part 4 of Schedule 2 to ITEPA 2003 (approved share incentive plans: types of shares that may be awarded) are met, and
  - (b) are awarded to employees, or acquired on their behalf as dividend shares, in accordance with the plan within the relevant period.
- (2) If any of the shares in the company in question are readily convertible assets at the time the shares are acquired by the trustees, the relevant period is the period of two years beginning with the date on which the shares were acquired by the trustees.

This is subject to sub-paragraph (4).

*Status: Point in time view as at 07/04/2005.*

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- (3) If at the time of the acquisition of the shares by the trustees none of the shares in the company in question are readily convertible assets, the relevant period is—
- (a) the period of five years beginning with the date on which the shares were acquired by the trustees, or
  - (b) if within that period any of the shares in that company become readily convertible assets, the period of two years beginning with the date on which they did so,

whichever ends first.

This is subject to sub-paragraph (4).

- (4) If the shares are acquired by the trustees by virtue of a payment in respect of which a deduction is allowed under paragraph 9 of Schedule 4AA to the Taxes Act (deduction for contribution to plan trust), the relevant period is the period of ten years beginning with the date of acquisition.
- (5) For the purposes of determining whether shares are awarded to a participant within the relevant period, shares acquired by the trustees at an earlier time are taken to be awarded to a participant before shares of the same class acquired by the trustees at a later time.
- (6) Sub-paragraph (5) is subject to paragraph 78(1) of Schedule 2 to ITEPA 2003 (acquisition by trustees of shares from employee share ownership trust).
- (7) For the purposes of this paragraph “readily convertible assets” has the meaning given by sections 701 and 702 of that Act (readily convertible assets).

This is subject to sub-paragraph (8).

- (8) In determining for the purposes of this paragraph whether shares are readily convertible assets any market for the shares that—
- (a) is created by virtue of the trustees acquiring shares for the purposes of the plan, and
  - (b) exists solely for the purposes of the plan,
- shall be disregarded.
- (9) In relation to shares acquired by the trustees before 11th May 2001 this paragraph has effect with the substitution—
- (a) in sub-paragraph (2), of “If the shares are readily convertible assets at the time they” for the words before “are acquired”, and
  - (b) in sub-paragraph (3)—
    - (i) of “If at the time of their acquisition by the trustees the shares are not readily convertible assets” for the words before “the relevant period”, and
    - (ii) in paragraph (b), of “the shares in question” for “any of the shares in that company”.

*Participant absolutely entitled as against trustees*

- 3 (1) Sub-paragraph (2) applies to any shares awarded to a participant under the plan.

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- (2) The participant is treated for capital gains tax purposes as absolutely entitled to those shares as against the trustees.
- (3) Sub-paragraph (2) applies notwithstanding anything in the plan or the trust instrument.

*Different classes of shares*

- 4 (1) For the purposes of Chapter 1 of Part 4 of this Act (shares, securities, options etc: general) a participant's plan shares are treated, so long as they are subject to the plan, as of a different class from any shares (which would otherwise be treated as of the same class) that are not plan shares.
- (2) For the purposes of that Chapter, any shares to which sub-paragraph (3) applies shall be treated as of a different class from any shares to which sub-paragraph (4) applies, even if they would otherwise fall to be treated as of the same class.
- (3) This sub-paragraph applies to any shares transferred to the trustees of the plan trust by a qualifying transfer that have not been awarded to participants under the plan.
- (4) This sub-paragraph applies to any shares held by the trustees that were not transferred to them by a qualifying transfer.
- (5) In this paragraph "qualifying transfer" has the meaning given in paragraph 78(2) of Schedule 2 to ITEPA 2003 (acquisition by trustees of shares from employee share ownership trust).
- (6) For the purposes of Chapter 1 of Part 4 of this Act any shares which—
  - (a) were acquired by the trustees by virtue of a payment in respect of which a deduction is allowed under paragraph 9 of Schedule 4AA to the Taxes Act (deduction for contribution to plan trust), and
  - (b) have not been awarded under the plan,shall be treated as of a different class from any shares held by the trustees that were not so acquired by them, even if they would otherwise fall to be treated as of the same class.

*No chargeable gain on shares ceasing to be subject to the plan*

- 5 (1) Shares which cease to be subject to the plan are treated as having been disposed of and immediately reacquired by the participant at market value.
- (2) Any gain accruing on that disposal is not a chargeable gain.

*Deemed disposal by trustees on disposal of beneficial interest*

- 6 (1) If at any time the participant's beneficial interest in any of his shares is disposed of, the shares in question shall be treated for the purposes of the SIP code as having been disposed of at that time by the trustees for the like consideration as was obtained for the disposal of the beneficial interest.
- (2) For this purpose there is no disposal of the participant's beneficial interest if and at the time when—

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- (a) in England and Wales or Northern Ireland, that interest becomes vested in any person on the insolvency of the participant or otherwise by operation of law, or
  - (b) in Scotland, that interest becomes vested in a judicial factor, in a trustee of the participant's sequestrated estate or in a trustee for the benefit of the participant's creditors.
- (3) If a disposal of shares falling within this paragraph is not at arm's length, the proceeds of the disposal shall be taken for the purposes of the SIP code to be equal to the market value of the shares at the time of the disposal.

*Treatment of forfeited shares*

- 7 (1) If any of the participant's plan shares are forfeited, they are treated as having been disposed of by the participant and acquired by the trustees at market value at the date of forfeiture.
- (2) Any gain accruing on that disposal is not a chargeable gain.

*Disposal of rights under rights issue*

- 8 (1) Any gain accruing on the disposal of rights under paragraph 77 of Schedule 2 to ITEPA 2003 (power of trustees to raise funds to subscribe for rights issue) is not a chargeable gain.
- (2) Sub-paragraph (1) does not apply to a disposal of rights unless similar rights are conferred in respect of all ordinary shares in the company.

**PART 2**

APPROVED SAYE OPTION SCHEMES

*Introductory*

- 9 (1) This Part of this Schedule forms part of the SAYE code (see section 516 of ITEPA 2003 (approved SAYE option schemes)).
- (2) Accordingly, expressions used in this Part of this Schedule and contained in the index at the end of Schedule 3 to that Act (approved SAYE option schemes) have the meaning indicated by the index.

*Market value rule not to apply*

- 10 (1) This paragraph applies where—
- (a) a share option (“the option”) has been granted to an individual—
    - (i) in accordance with the provisions of an approved SAYE option scheme, and
    - (ii) by reason of the individual's office or employment as a director or employee of a company,
  - (b) the individual exercises the option in accordance with the provisions of the SAYE option scheme at a time when the scheme is approved, and



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- (c) condition A or condition B in section 519(2) or (3) of ITEPA 2003 (no charge in respect of exercise of option) is met.
- (2) The company mentioned in sub-paragraph (1)(a)(ii) may be—
  - (a) the company whose shares are the subject of the option, or
  - (b) some other company.
- (3) If the option—
  - (a) was granted under the SAYE option scheme before the withdrawal of approval under paragraph 42 of Schedule 3 to ITEPA 2003, but
  - (b) is exercised after the withdrawal of approval,then, for the purposes of sub-paragraph (1)(b) above in its application to the option, the scheme is to be treated as if it were still approved at the time of the exercise.
- (4) Section 17(1) (disposals and acquisitions treated as made at market value) shall not apply in calculating the consideration for—
  - (a) the individual’s acquisition of shares by the exercise of the option, or
  - (b) any corresponding disposal of those shares to the individual.
- (5) References in sub-paragraphs (1)(b) and (4) above to the individual include references to a person exercising the option in accordance with provision included in the scheme by virtue of paragraph 32 of Schedule 3 to ITEPA 2003 (exercise of options: death); and sub-paragraph (1)(c) above does not apply in relation to a person so exercising the option.

### PART 3

#### APPROVED CSOP SCHEMES

##### *Introductory*

- 11 (1) This Part of this Schedule forms part of the CSOP code (see section 521 of ITEPA 2003 (approved CSOP schemes)).
- (2) Accordingly, expressions used in this Part of this Schedule and contained in the index at the end of Schedule 4 to that Act (approved CSOP schemes) have the meaning indicated by the index.
- (3) This Part of this Schedule applies where—
  - (a) a share option (“the option”) has been granted to an individual—
    - (i) in accordance with the provisions of an approved CSOP scheme, and
    - (ii) by reason of the individual’s office or employment as a director or employee of a company, and
  - (b) shares (“the relevant shares”) are acquired by the exercise of the option.
- (4) The company mentioned in sub-paragraph (3)(a)(ii) may be—
  - (a) the company whose shares are the subject of the option, or
  - (b) some other company.

*Status: Point in time view as at 07/04/2005.*

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*Relief where income tax charged in respect of grant of option*

- 12 (1) This paragraph applies where an amount (the “employment income amount”) counted as employment income of the individual under section 526 of ITEPA 2003 (charge where option granted at a discount) in respect of the option.
- (2) For the purposes of section 38(1)(a) (acquisition and disposal costs etc.), that part of the employment income amount which is attributable to the relevant shares shall be treated as consideration given for the acquisition of the relevant shares.
- (3) This paragraph also applies where the individual was chargeable to income tax on an amount in respect of the option under—
- (a) subsection (6) of section 185 of ICTA (as it had effect before 1st January 1992),
  - (b) subsection (6A) of that section (as it had effect in relation to options obtained on or after 1st January 1992 but before 29th April 1996), or
  - (c) subsection (6) of that section (as it had effect in relation to options obtained on or after 29th April 1996);
- and in such a case the “employment income amount” means the amount on which the individual was so chargeable.
- (4) This paragraph applies whether or not—
- (a) the exercise of the option is in accordance with the provisions of the CSOP scheme, or
  - (b) the CSOP scheme is approved at the time of the exercise.

*Market value rule not to apply*

- 13 (1) This paragraph applies where—
- (a) the individual exercises the option in accordance with the provisions of the CSOP scheme at a time when the scheme is approved, and
  - (b) the condition in section 524(2) of ITEPA 2003 (no charge in respect of exercise of option) is met.
- (2) Section 17(1) (disposals and acquisitions treated as made at market value) shall not apply in calculating the consideration for—
- (a) the individual’s acquisition of the relevant shares by the exercise of the option, or
  - (b) any corresponding disposal of the relevant shares to the individual.
- (3) Sub-paragraph (2) also applies where the option is exercised at a time when the scheme is approved in accordance with provision included in the scheme by virtue of paragraph 25 of Schedule 4 to ITEPA 2003 (exercise of options: death); and references in that sub-paragraph to the individual are to be read accordingly.

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## PART 4

### ENTERPRISE MANAGEMENT INCENTIVES

#### *Introductory*

- 14 (1) This Part of this Schedule forms part of the EMI code (see section 527 of ITEPA 2003 (enterprise management incentives: qualifying options)).
- (2) Accordingly, expressions used in this Part of this Schedule and contained in the index at the end of Schedule 5 to that Act (enterprise management incentives) have the meaning indicated by the index.
- (3) In this Part of this Schedule, “qualifying shares”—
- (a) means shares acquired by the exercise of a qualifying option, subject to sub-paragraphs (4) and (5), and
  - (b) includes shares (“replacement shares”) which—
    - (i) are treated under section 127 (equation of original shares and new holding) as the same asset as a holding of qualifying shares, and
    - (ii) meet the requirements of paragraph 35 of Schedule 5 to ITEPA 2003 (type of shares that may be acquired).
- (4) If a disqualifying event occurs in relation to a qualifying option (whether the original option or a replacement option), shares acquired by the exercise of that option are qualifying shares only if the option is exercised within 40 days of that event.
- (5) References in this Part of this Schedule to “the original option”, where there has been one or more replacement options, are to the option that the replacement option (or, if there has been more than one, the first of them) replaced.

#### *Taper relief on disposal of qualifying shares*

- 15 For the purposes of computing taper relief on a disposal of qualifying shares, the shares are treated as if they had been acquired when the original option was granted.

#### *Rights issues in respect of qualifying shares*

- 16 Where—
- (a) an individual holds qualifying shares, and
  - (b) there is, by virtue of any such allotment for payment as is mentioned in section 126(2)(a) (allotment in proportion to shareholdings), a reorganisation affecting that holding,
- sections 127 to 130 (which relate to reorganisation or reduction of share capital) shall not apply in relation to that holding.”

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*Pension Schemes Act 1993 (c. 48)*

- 222 In section 181(1) of the Pension Schemes Act 1993 (general interpretation), in the definition of “employee” for “emoluments chargeable to income tax under Schedule E” substitute “ general earnings (as defined by section 7 of the Income Tax (Earnings and Pensions) Act 2003) ”.

*Pension Schemes (Northern Ireland) Act 1993 (c. 49)*

- 223 In section 176(1) of the Pension Schemes (Northern Ireland) Act 1993 (general interpretation), in the definition of “employee” for “emoluments chargeable to income tax under Schedule E” substitute “ general earnings (as defined by section 7 of the Income Tax (Earnings and Pensions) Act 2003) ”.

*Finance Act 1994 (c. 9)*

- 224 (1) In the Finance Act 1994, paragraph 27 of Schedule 24 (provisions relating to the Railways Act 1993 — employee benefits: transport vouchers) is amended as follows.
- (2) In sub-paragraph (3) for “Subsection (6) of section 141 of the Taxes Act 1988” substitute “ Section 86 of ITEPA 2003 (exception for certain transport vouchers) ”.
- (3) In sub-paragraph (3)(c) for “paragraphs (a) to (d) of that subsection” substitute “ section 86(2)(a) to (d) of ITEPA 2003 ”.
- (4) In sub-paragraph (12) after the definition of “the former transport voucher benefits for comparable employees” insert—
- ““ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003.”
- (5) For sub-paragraph (13) substitute—
- “(13) Subject to paragraph 1(1) and sub-paragraph (12) above, expressions used in this paragraph and in section 86 of ITEPA 2003 have the same meaning in this paragraph as in that section.
- This does not apply in relation to the reference to a transport voucher in sub-paragraph (1) above.”

*Finance Act 1995 (c. 4)*

- 225 The Finance Act 1995 is amended as follows.
- 226 (1) Amend section 128 (limit on income chargeable on non-residents: income tax) as follows.
- (2) For subsection (3)(c) substitute—
- “(cc) it is chargeable to tax under Part 9 of ITEPA 2003 (pension income) because section 577 or 605 of that Act applies to it (UK social security pensions and retirement annuity contracts);
- (cd) it arises from a source in the United Kingdom and is chargeable to tax under Part 9 of ITEPA 2003 because section 609, 610 or 611 of that Act applies to it (certain employment-related annuities);

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(ce) it is a taxable benefit listed in Table A in section 660 of ITEPA 2003, other than income support or jobseeker's allowance, chargeable to tax under Part 10 of that Act (social security income);”.

(3) In subsection (3)(d) for “paragraphs (a) to (c)” substitute “ paragraphs (a) to (ce) ”.

(4) For subsection (11) substitute—

“(11) In this section—

“investment transaction” has the same meaning as in section 127 above;

“ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003.”

227 In section 137(7) (part-time workers: miscellaneous provisions) for “Subsections (2) to” substitute “ Subsection ”.

*Jobseekers Act 1995 (c. 18)*

228 The Jobseekers Act 1995 is amended as follows.

229 In section 15(2)(c)(i) (effect on other claimants) for “emoluments in pursuance of section 203 of the Income and Corporation Taxes Act 1988 (PAYE)” substitute “ taxable earnings (as defined by section 10 of the Income Tax (Earnings and Pensions) Act 2003) under PAYE regulations ”.

230 In section 26(3) (the back to work bonus) for the words from “Subject to section 617” to “not to be taxable)” substitute “ Subject to section 677 of the Income Tax (Earnings and Pensions) Act 2003 (which provides for a back to work bonus not to be taxable) ”.

*Child Support Act 1995 (c. 34)*

231 For section 10(4) of the Child Support Act 1995 (child maintenance bonus) substitute—

“(4) Subsection (3) is subject to section 677 of the Income Tax (Earnings and Pensions) Act 2003 (which provides for a back to work bonus not to be taxable).”

*Child Support (Northern Ireland) Order 1995 (S.I. 1995/2702 (N.I. 13))*

232 For Article 4(4) of the Child Support (Northern Ireland) Order 1995 (child maintenance bonus) substitute—

“(4) Paragraph (3) is subject to section 677 of the Income Tax (Earnings and Pensions) Act 2003 (which provides for a back to work bonus not to be taxable).”

*Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15))*

233 The Jobseekers (Northern Ireland) Order 1995 is amended as follows.

234 In Article 17(2)(c)(i) (effect on other claimants) for “emoluments in pursuance of section 203 of the Income and Corporation Taxes Act 1988 (PAYE)” substitute “ taxable earnings (as defined by section 10 of the Income Tax (Earnings and

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Pensions) Act 2003 under regulations made under section 684 of that Act (PAYE regulations) ”.

- 235 In Article 28(3) (the back to work bonus) for the words from “Subject to section 617” to “not to be taxable)” substitute “ Subject to section 677 of the Income Tax (Earnings and Pensions) Act 2003 (which provides for a back to work bonus not to be taxable) ”.

*Teaching and Higher Education Act 1998 (c. 30)*

- 236 In section 22 of the Teaching and Higher Education Act 1998 (new arrangements for giving financial support to students)—
- (a) in subsection (5)(g) for “regulations under section 203 of the Income and Corporation Taxes Act 1988 (PAYE)” substitute “ PAYE regulations ”; and
  - (b) in subsection (6)(a) for “income assessable to income tax under Schedule E” substitute “ PAYE income ”.

*Scotland Act 1998 (c. 46)*

- 237 In section 79(3) of the Scotland Act 1998 (supplemental powers to modify enactments) for “section 203 of the Income and Corporation Taxes Act 1988 (PAYE)” substitute “ PAYE regulations ”.

*Education (Student Support) (Northern Ireland) Order 1998 (S.I. 1998/1760 (N.I. 14))*

- 238 In Article 3 of the Education (Student Support) (Northern Ireland) Order 1998 (new arrangements for giving financial support to students)—
- (a) in paragraph (5)(g) for “section 203 of the Income and Corporation Taxes Act 1988 (PAYE)” substitute “ section 684 of the Income Tax (Earnings and Pensions) Act 2003 (PAYE regulations) ”; and
  - (b) in paragraph (6)(a) for “income assessable to income tax under Schedule E” substitute “ PAYE income (as defined in section 683 of the Income Tax (Earnings and Pensions) Act 2003 ”.

*Tax Credits Act 1999 (c. 10)*

- 239 The Tax Credits Act 1999 is amended as follows.
- 240 In section 6(1) (payment of tax credit by employers etc.) for “income assessable to income tax under Schedule E” substitute “ PAYE income ”.
- 241 In paragraph 10(1) of Schedule 2 (transfer of functions), in paragraph (b) of the subsection which, in any case where the overpayment was made in respect of tax credit, is treated as substituted for—
- (a) subsection (8) of section 71 of the Social Security Administration Act 1992 (c. 5), and
  - (b) subsection (8) of section 69 of the Social Security Administration (Northern Ireland) Act 1992 (c. 8),
- for “section 203(2)(a) of the Income and Corporation Taxes Act 1988 (PAYE)” substitute “ PAYE regulations ”.

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*Finance Act 2000 (c. 17)*

242 The Finance Act 2000 is amended as follows.

243 (1) Amend section 38 (payroll deduction scheme) as follows.

(2) In subsection (1)—

- (a) for “under section 202 of the Taxes Act 1988” substitute “ for the purposes of section 714 of the Income Tax (Earnings and Pensions) Act 2003 ”,
- (b) for “an employer” substitute “ a person ”,
- (c) for “employee” substitute “ individual ”, and
- (d) for “employer”, in the second place where it occurs, substitute “ person ”.

(3) In subsection (4) for the definitions of “agent”, “employee” and “employer” substitute—

““agent” means an agent approved for the purposes of section 714 of the Income Tax (Earnings and Pensions) Act 2003;”.

244 (1) Amend Schedule 12 (provision of services through an intermediary) as follows.

(2) In paragraph 17—

- (a) for “deemed Schedule E payment”, in each place, substitute “ deemed employment payment ”; and
- (b) after sub-paragraph (3) insert—

“(4) In this paragraph and paragraph 18 expressions that are also used in Chapter 8 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 have the same meaning as in that Chapter.”

(3) In paragraph 18—

- (a) in sub-paragraph (1) for “deemed Schedule E payment” substitute “ deemed employment payment ”; and
- (b) in sub-paragraph (3)(a) for “Schedule E” substitute “ the employment income Parts of the Income Tax (Earnings and Pensions) Act 2003 ”.

<sup>F372</sup>245 .....

**Textual Amendments**

**F372** Sch. 6 para. 245 repealed (with effect in accordance with Sch. 17 para. 5(2) of the amending Act) by Finance Act 2004 (c. 12), Sch. 42 Pt. 2(12)

*Capital Allowances Act 2001 (c. 2)*

246 The Capital Allowances Act 2001 is amended as follows.

247 (1) Amend section 4 (capital expenditure) as follows.

(2) For subsection (2)(b) substitute—

“(b) any expenditure or sum that may be allowed as a deduction under a relevant provision from the taxable earnings from an employment or office held by the person.”

(3) After subsection (2) insert—

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“(2A) In subsection (2)—

“relevant provision” means any of the following—

- (a) section 262;
- (b) section 232 of ITEPA 2003 (giving effect to mileage allowance relief);
- (c) Chapters 2 to 6 of Part 5 of that Act (general deductions allowed from earnings); and
- (d) sections 613(1), 619 and 639 of ICTA (contributions to pensions funds etc.), and

“taxable earnings” has the meaning given by section 10 of ITEPA 2003.”

(4) In subsection (3) for “emoluments” substitute “ earnings ”.

248 (1) Amend section 20 (employments and offices) as follows.

(2) In subsection (2)—

- (a) for “emoluments” substitute “ earnings ”; and
- (b) for “do not fall within Case I or II of Schedule E” substitute “ fall within section 22 or 26 of ITEPA 2003 ”.

(3) In subsection (3)—

- (a) for “those emoluments” substitute “ those earnings ”; and
- (b) for “other emoluments” substitute “ other taxable earnings (as defined by section 10 of ITEPA 2003) ”.

249 In section 61(2) (disposal events and disposal values), in entry 2(b) of the Table, for “Schedule E” substitute “ ITEPA 2003 ”.

250 In section 63(1) (cases in which disposal value is nil) for “Schedule E” substitute “ ITEPA 2003 ”.

251 In section 72(3) (disposal values), in entry 2(b) of the Table, for “Schedule E” substitute “ ITEPA 2003 ”.

252 In section 88(c) (sales at under-value) for “Schedule E” substitute “ ITEPA 2003 ”.

253 In section 262 (employments and offices)—

- (a) in paragraph (a) for “an amount to be deducted from the emoluments of” substitute “ a deduction from the taxable earnings from ”; and
- (b) in paragraph (b) for “an emolument” substitute “ earnings ”.

254 In section 423(1) (disposal value for sections 421 and 422), in entry 2(b) of the Table, for “Schedule E” substitute “ ITEPA 2003 ”.

255 At the end of Part 1 of Schedule 1 (abbreviations) insert—

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“ITEPA 2003

The Income Tax (Earnings and Pensions) Act 2003”.

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256 In Part 2 of Schedule 1 (defined expressions used in the Act), in the entry relating to “United Kingdom”, after “section 830 of ICTA” insert “ and section 41 of ITEPA 2003 ”.



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*Finance Act 2001 (c. 9)*

257 For section 95 of the Finance Act 2001 (exemptions in relation to employee share ownership plans) substitute—

**“95 Exemptions in relation to approved share incentive plans**

(1) This section forms part of the SIP code (see section 488 of the Income Tax (Earnings and Pensions) Act 2003 (approved share incentive plans)).

(2) Accordingly, expressions used in this section and contained in the index at the end of Schedule 2 to that Act (approved share incentive plans) have the meaning indicated by that index.

(3) Where, under an approved share incentive plan, partnership shares or dividend shares are transferred by the trustees to an employee—

(a) no ad valorem stamp duty is chargeable on any instrument by which the transfer is made, and

(b) no stamp duty reserve tax is chargeable on any agreement by the trustees to make the transfer.

(4) But subsection (3) does not apply to—

(a) any instrument executed (within the meaning of the Stamp Act 1891) before 6th April 2003, or

(b) any agreement to transfer shares made before that date.”

258 (1) In Schedule 22 (remediation of contaminated land), amend paragraph 5 as follows.

(2) For sub-paragraph (1)(a) substitute—

“(a) the earnings paid by the company to directors or employees of the company;”.

(3) After sub-paragraph (1) insert—

“(1A) In sub-paragraph (1)(a) “earnings” means earnings or amounts treated as earnings which constitute employment income (see section 7(2)(a) or (b) of the Income Tax (Earnings and Pensions) Act 2003).”

*Social Security Contributions (Share Options) Act 2001 (c. 20)*

259 The Social Security Contributions (Share Options) Act 2001 is amended as follows.

260 In section 2(3)(b) (effect of notice under section 1) for “section 135(3)(a) of the Income and Corporation Taxes Act 1988” substitute “ section 479 of the Income Tax (Earnings and Pensions) Act 2003 ”.

261 (1) Amend section 3 (special provision for roll-overs) as follows.

(2) In subsection (4)(a) for “section 136(1) of the Income and Corporation Taxes Act 1988” substitute “ section 485(1) to (4) of the Income Tax (Earnings and Pensions) Act 2003 ”.

(3) In subsection (4)(b)(i) for “section 135(3)(a)” substitute “ section 479 ”.

(4) For subsection (6) substitute—

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“(6) Subject to subsection (7), in relation to the replacement right or any subsequent right, section 485(1) to (3) of the Income Tax (Earnings and Pensions) Act 2003 (application of Chapter 5 of Part 7 where share option exchanged for another) shall be deemed to have effect (or, as the case may be, to have had effect) for the purposes of the determination mentioned in subsection (5) of this section—

- (a) as if that section had effect (or, as the case may be, had had effect) in relation to that right to the extent only that it is a right to acquire additional shares; and
- (b) as if the value of the consideration for the grant of the original right had been nil.”

(5) In subsection (7)(b) for “section 135 of the Income and Corporation Taxes Act 1988” substitute “ Chapter 5 of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 ”.

(6) In subsection (11)(a) for “section 135(3)(a) of the Income and Corporation Taxes Act 1988” substitute “ section 479 of the Income Tax (Earnings and Pensions) Act 2003 ”.

262 In section 5(2)(c) (interpretation)—

- (a) for “subsection (8) of section 135 of the Income and Corporation Taxes Act 1988 (c. 1)” substitute “ section 483(1) of the Income Tax (Earnings and Pensions) Act 2003 ”; and
- (b) for “that section” substitute “ Chapter 5 of Part 7 of that Act ”.

*State Pension Credit Act 2002 (c. 16)*

263 (1) Section 17(1) of the State Pension Credit Act 2002 (other interpretation provisions) is amended as follows.

- (2) In paragraph (b) of the definition of “foreign war disablement pension” for “subsection (1) of section 315 of the Income and Corporation Taxes Act 1988 (c. 1)” substitute “ section 641 of the Income Tax (Earnings and Pensions) Act 2003 ”.
- (3) In paragraph (b) of the definition of “foreign war widow’s or widower’s pension” for “section 315(2)(e) of the Income and Corporation Taxes Act 1988” substitute “ section 641(1)(e) or (f) of the Income Tax (Earnings and Pensions) Act 2003 ”.
- (4) In paragraph (b) of the definition of “war disablement pension”, for “subsection (1) of section 315 of the Income and Corporation Taxes Act 1988 (c. 1)” substitute “ any of paragraphs (a) to (f) of section 641(1) of the Income Tax (Earnings and Pensions) Act 2003 ”.
- (5) In paragraph (b) of the definition of “war widow’s or widower’s pension” for “section 315(2)(e) of the Income and Corporation Taxes Act 1988” substitute “ section 641(1)(e) or (f) of the Income Tax (Earnings and Pensions) Act 2003 ”.

*Tax Credits Act 2002 (c. 21)*

264 The Tax Credits Act 2002 is amended as follows.

265 (1) Amend section 25 (payments of working tax credit by employers) as follows.

- (2) In subsection (1) for “Schedule E payments” substitute “ payments of, or on account of, PAYE income ”.

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- (3) In subsection (5) for “Schedule E payment” substitute “ payment of, or on account of, PAYE income ”.
  - (4) Omit subsection (6).
- 266 In section 29(5) (recovery of overpayments) for “regulations under section 203(2) (a) of the Income and Corporation Taxes Act 1988 (c. 1) (PAYE)” substitute “ PAYE regulations ”.

*State Pension Credit Act (Northern Ireland) 2002 (c. 14 (N.I.))*

- 267 (1) Section 17(1) of the State Pension Credit Act (Northern Ireland) 2002 (other interpretation provisions) is amended as follows.
- (2) In paragraph (b) of the definition of “foreign war disablement pension” for “subsection (1) of section 315 of the Income and Corporation Taxes Act 1988 (c. 1)” substitute “ section 641 of the Income Tax (Earnings and Pensions) Act 2003 ”.
  - (3) In paragraph (b) of the definition of “foreign war widow’s or widower’s pension” for “section 315(2)(e) of the Income and Corporation Taxes Act 1988” substitute “ section 641(1)(e) or (f) of the Income Tax (Earnings and Pensions) Act 2003 ”.
  - (4) In paragraph (b) of the definition of “war disablement pension”, for “subsection (1) of section 315 of the Income and Corporation Taxes Act 1988 (c. 1)” substitute “ any of paragraphs (a) to (f) of section 641(1) of the Income Tax (Earnings and Pensions) Act 2003 ”.
  - (5) In paragraph (b) of the definition of “war widow’s or widower’s pension” for “section 315(2)(e) of the Income and Corporation Taxes Act 1988” substitute “ section 641(1)(e) or (f) of the Income Tax (Earnings and Pensions) Act 2003 ”.

*Certain corresponding Northern Ireland provision*

- 268 (1) This paragraph applies if provision is made for Northern Ireland which corresponds to section 171ZJ of the Social Security Contributions and Benefits Act 1992 (c. 4) (Part 12ZA — statutory paternity pay: supplementary) (which was inserted by section 2 of the Employment Act 2002 (c. 22)).
- (2) In the Northern Ireland provision any reference to emoluments chargeable to income tax under Schedule E is to be construed as a reference to general earnings (as defined by section 7 of this Act).
- 269 (1) This paragraph applies if provision is made for Northern Ireland which corresponds to section 171ZS of the Social Security Contributions and Benefits Act 1992 (Part 12ZA — statutory adoption pay: supplementary) (which was inserted by section 4 of the Employment Act 2002).
- (2) In the Northern Ireland provision any reference to emoluments chargeable to income tax under Schedule E is to be construed as a reference to general earnings (as defined by section 7 of this Act).

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## SCHEDULE 7

Section 723

### TRANSITIONALS AND SAVINGS

#### PART 1

##### CONTINUITY OF THE LAW

- 1 The repeal of provisions and their enactment in a rewritten form in this Act does not affect the continuity of the law.
- 2 Paragraph 1 does not apply to any change in the law made by this Act.
- 3 Any subordinate legislation or other thing which—
  - (a) has been made or done, or has effect as if made or done, under or for the purposes of a repealed provision, and
  - (b) is in force or effective immediately before the commencement of the corresponding rewritten provision,
 has effect after that commencement as if made or done under or for the purposes of the rewritten provision.
- 4 Any reference (express or implied) in any enactment, instrument or document to—
  - (a) a rewritten provision, or
  - (b) things done or falling to be done under or for the purposes of a rewritten provision,
 is to be read as including, in relation to times, circumstances or purposes in relation to which any corresponding repealed provision had effect, a reference to the repealed provision or (as the case may be) things done or falling to be done under or for the purposes of the repealed provision.
- 5 Any reference (express or implied) in any enactment, instrument or document to—
  - (a) a repealed provision, or
  - (b) things done or falling to be done under or for the purposes of a repealed provision,
 is to be read as including, in relation to times, circumstances or purposes in relation to which any corresponding rewritten provision has effect, a reference to the rewritten provision or (as the case may be) things done or falling to be done under or for the purposes of the rewritten provision.
- 6 Paragraphs 1 to 5 have effect instead of section 17(2) of the Interpretation Act 1978 (c. 30) (but are without prejudice to any other provision of that Act).
- 7 Paragraphs 4 and 5 apply only in so far as the context permits.

#### PART 2

##### EMPLOYMENT INCOME: CHARGE TO TAX

##### *Taxable earnings*

- 8 (1) The charging provisions of Chapters 4 and 5 of Part 2—

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- (a) apply for the purpose of determining taxable earnings from an employment in the tax year 2003-04 or any later tax year, and
  - (b) accordingly apply where (for the purposes of those Chapters) general earnings are received, or remitted to the United Kingdom, in that or any later tax year.
- (2) But they apply to general earnings for a tax year before the tax year 2003-04, as well as to those for that or any later year.

This is subject to sub-paragraph (3).

- (3) If—
- (a) any general earnings within subsection (1) of section 22 (chargeable overseas earnings) or 26 (foreign earnings of resident employee) are for a tax year before 1989-90,
  - (b) the earnings are remitted to the United Kingdom in the tax year 2003-04 or any later tax year (“the remittance year”), and
  - (c) either—
    - (i) the employee is not resident in the United Kingdom in the remittance year, or
    - (ii) the employment is not held in the remittance year,subsection (2) of section 22 or 26 does not apply to the earnings.
- (4) Section 30 (treatment of earnings for year in which employment not held) does not apply where any of the tax years mentioned in subsection (2) or (3) of that section is a tax year before the tax year 1989-90.

*Relief for delayed remittances*

- 9 (1) This paragraph applies where one or more of the earlier tax years referred to in section 35(3)(b) (treatment of delayed remittances as taxable earnings in earlier tax years) is a tax year before the tax year 2003-04.
- (2) References (whether express or implied) in sections 35 and 36 to earnings constituting or being treated as taxable earnings from the employment under section 22(2) or 26(2) in such an earlier tax year are to be construed for the purposes of the charging of income tax under Case III of Schedule E in that year as references to earnings constituting or being treated as emoluments of the employment falling within that Case and received in the United Kingdom in that year.
- (3) For the purposes of this paragraph the reference in sub-paragraph (2) to the receipt of income in the United Kingdom is to be construed in accordance with section 132(5) of ICTA (meaning of emoluments received in the United Kingdom).
- 10 Section 36(2) (the definition of “blocked earnings”) applies in relation to emoluments of the employment received in a country or territory outside the United Kingdom in a tax year before the tax year 2003-04 with the substitution of—
- (a) “Emoluments” for “General earnings”, and
  - (b) the following paragraph for paragraph (c)—
    - “(c) would have constituted emoluments of the employment on which income tax would have been charged under Case III of Schedule E in that year if they had been so transferred.”
- 11 (1) This paragraph applies where a claimant—

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- (a) makes an election under section 36 for the purposes of a claim for relief under section 35, and
  - (b) has made a previous claim for relief under section 585 of ICTA (relief from tax on delayed remittances) in respect of delayed remittances from the same employment.
- (2) Section 36(6) (limit on amount of remittances allocated to a previous tax year) applies as if, in the definition of “PC”, the reference to the amount of remittances treated as taxable earnings from the employment in the tax year in question as a result of a previous claim by the claimant under section 35 includes a reference to the amount of remittances treated as income from the employment received in the United Kingdom in that year as a result of a previous claim by the claimant under section 585 of ICTA.
- (3) For the purposes of this paragraph the reference in sub-paragraph (2) to the receipt of income in the United Kingdom is to be construed in accordance with section 132(5) of ICTA (meaning of emoluments received in the United Kingdom).

*Disputes as to domicile or ordinary residence*

- 12 (1) Nothing in sections 42 and 43 (disputes as to domicile or ordinary residence) has effect where the dispute relates to the amount of income charged to tax for the tax year 2002-03 or any earlier tax year.
- (2) Nothing in those sections—
- (a) as applied by section 645(4C) of ICTA (earnings from pensionable employment) or section 76(6E) of FA 1989 (non-approved retirement benefits schemes) has effect where the dispute relates to the amount of income charged to tax for the tax year 2002-03 or any earlier tax year, or
  - (b) as applied by section 9(2) of TCGA 1992 (residence, including temporary residence) has effect where the dispute relates to the amount of capital gains tax charged for the tax year 2002-03 or any earlier tax year.
- (3) Accordingly, section 207 of ICTA (disputes as to domicile or ordinary residence) continues to apply to the disputes mentioned in sub-paragraphs (1) and (2) whether they arise before or after 6th April 2003.

*Application of provisions to agency workers*

- 13 In relation to times before 6th April 2003, Chapter 7 of Part 2 applies with the following modifications—
- (a) references to “employment income of the worker” are to be read as references to “income of the worker chargeable to tax under Schedule E”,
  - (b) references to “earnings” are to be read as references to “emoluments”, and
  - (c) references to “this Chapter” are to be read as references to “section 134 of ICTA”.
- 14 Section 44(2) does not apply in relation to—
- (a) payments made before 6th April 1998 other than payments made in respect of services provided on or after that date, or
  - (b) payments made on or after that date in respect of services provided before that date,
- if in providing the services the worker is or would be a sub-contractor within the meaning of section 560 of ICTA (sub-contractors in the construction industry).

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### PART 3

#### EMPLOYMENT INCOME: EARNINGS AND BENEFITS ETC. TREATED AS EARNING

*Taxable benefits: dispensations relating to benefits within provisions not applicable to lower-paid employments*

- 15 (1) An existing notification—
- (a) is not affected by any of the repeals made by this Act, but
  - (b) continues in force as if it were a dispensation given under section 65 (dispensations relating to benefits within provisions not applicable to lower-paid employment),
- and accordingly, where an existing notification is revoked under that section for any period before 6th April 2003, subsection (8) or (9) of that section extends to tax years before the tax year 2003-04.
- (2) In this paragraph an “existing notification”—
- (a) means a notification which, immediately before 6th April 2003, was in force under section 166(1) of ICTA (notice of nil liability in respect of payments, benefits or facilities); and
  - (b) includes a notification whose validity was preserved by subsection (4) of that section (notifications given under section 199 of FA 1970);
- but a notification within paragraph (b) only continues to have effect under this paragraph in respect of any liability to tax arising by virtue of Chapter 3 (expenses) or 10 (residual liability to charge) of Part 3.
- 16 (1) This paragraph applies if—
- (a) mileage allowance payments are made to an employee in respect of the use of a vehicle that is not a company vehicle, or
  - (b) mileage allowance relief is available in respect of the use by an employee of a vehicle.
- (2) Any notification under section 166(1) of ICTA (notice of nil liability in respect of payments, benefits or facilities) which—
- (a) was in force immediately before 6th April 2002, and
  - (b) has effect as a dispensation under section 65 (dispensations relating to benefits within provisions not applicable to lower-paid employment),
- does not apply in relation to payments made, or benefits or facilities provided, in respect of expenses incurred in connection with the use of the vehicle by the employee for business travel.
- (3) In this paragraph “business travel”, “company vehicle” and “mileage allowance payment” have the same meanings as in Chapter 2 of Part 4.

*Taxable benefits: the benefits code*

- 17 (1) In relation to times before 6th April 2003, references in the benefits code to “employment”, “employed”, “employee” and “employer” are to be read in accordance with this paragraph.
- (2) In relation to the Chapters of the benefits code listed in section 216(4) (provisions not applicable to lower-paid employments), the references mentioned in subparagraph (1) are to be read in accordance with section 66 (meaning of employment

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and related expressions) but as if in subsection (1)(a) there were substituted “an employment to which Chapter 2 of Part 5 of ICTA applies” for “a taxable employment under Part 2”.

- (3) In relation to any other Chapters of the benefits code, the references mentioned in sub-paragraph (1) are to be read in accordance with section 66 but as if in subsection (1)(a) there were substituted “an employment the emoluments of which fall to be assessed under Schedule E” for “a taxable employment under Part 2”.
- (4) Where this paragraph applies, Chapter 11 of Part 3 (exclusion of lower-paid employments from parts of benefits code) does not apply.
- (5) This paragraph is subject to paragraphs 18(2), 24, 27(3), 29(4) and 31(2) of this Schedule.

*Taxable benefits: vouchers and credit-tokens*

- 18 (1) For the purpose of applying sections 82 to 89 (non-cash vouchers) in relation to times before 6th April 2003, Chapter 4 of Part 3 applies with the following modification.
  - (2) In section 89(1)(c) (reduction for meal vouchers) substitute “ an employment which is not an employment within the meaning of section 167(1)(b) of ICTA ” for “lower-paid employment within the meaning of Chapter 11 of this Part (see section 217)”.
- 19 (1) This paragraph applies to a notification which, immediately before 6th April 2003, was in force under section 144(1) of ICTA (notice of nil liabilities in respect of vouchers or credit-tokens).
  - (2) The notification—
    - (a) is not affected by any repeals made by this Act, but
    - (b) continues in force as if it were a dispensation given under section 96 (dispensations relating to vouchers or credit-tokens),
 and accordingly, where the notification is revoked under that section for any period before 6th April 2003, subsection (7) or (8) of that section extends to tax years before the tax year 2003-04.
- 20 (1) This paragraph applies if—
  - (a) mileage allowance payments are made to an employee in respect of the use of a vehicle that is not a company vehicle, or
  - (b) mileage allowance relief is available in respect of the use by an employee of a vehicle.
  - (2) Any notification under section 144(1) of ICTA (notice of nil liability in respect of vouchers or credit-tokens) which—
    - (a) was in force immediately before 6th April 2002, and
    - (b) has effect as a dispensation under section 96 (dispensations relating to vouchers or credit-tokens),
 does not apply in relation to cash vouchers, non-cash vouchers or credit-tokens provided in respect of expenses incurred in connection with the use of the vehicle by the employee for business travel.
  - (3) In this paragraph “business travel”, “company vehicle” and “mileage allowance payment” have the same meanings as in Chapter 2 of Part 4.



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*Taxable benefits: living accommodation*

- 21 (1) Section 107 (special rule for calculating cost of providing accommodation) does not apply if the employee first occupied the living accommodation before 31st March 1983.
- (2) Nothing in this paragraph affects the operation of section 107 as applied by section 398(2)(b) or 415(2)(b).

*Taxable benefits: cars, vans and related benefits*

- 22 (1) In relation to a capital sum contributed by the employee before 6th April 2003, section 132 (cars: capital contributions by employee) applies with the following modifications.
- (2) In subsection (1)(b) substitute “under sections 168A to 168C of ICTA in determining the price of the car as regards a year” for “in calculating the cash equivalent of the benefit of the car”.
- (3) In subsection (2)—
- (a) omit paragraph (a), and
  - (b) in paragraph (b) substitute “ the tax years after the tax year in which the contribution was made which are ” for “subsequent”.
- 23 (1) In relation to a capital sum contributed by the employee before 6th April 2003, section 147 (classic cars: 15 years of age or more) applies with the following modifications.
- (2) In subsection (5)(b) substitute “under section 168F(3) of ICTA in determining the price of the car as regards a year” for “in determining the market value of the car”.
- (3) In subsection (6)—
- (a) omit paragraph (a), and
  - (b) in paragraph (b) substitute “ the tax years after the tax year in which the contribution was made which are ” for “subsequent”.

F373<sup>24</sup> .....

**Textual Amendments**

**F373** Sch. 7 para. 24 repealed (22.7.2004) by Finance Act 2004 (c. 12), Sch. 42 Pt. 2(9)

*Taxable benefits: loans*

- 25 (1) Chapter 7 of Part 3 applies to a loan made at any time, including one made before 29th July 1976 (the date on which FA 1976 was passed).
- (2) But section 188 (loan released or written off: amount treated as earnings) does not apply to benefits received in pursuance of arrangements made at any time with a view to protecting the holder of shares acquired before 6th April 1976 from a fall in their market value.
- 26 (1) This paragraph relates to the operation of section 183 (alternative method of calculation) in relation to section 177(2) (exceptions for loans at fixed rate of interest) in the case of a loan made before 6th April 2003.

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- (2) Where section 183 applies, then for the purpose of calculating under section 177(2) the amount of interest that would have been payable on the loan at the official rate of interest for the year in which the loan was made, in step 3 in section 183(3) for “the number of days in the tax year” substitute “ 365 ”.
- 27 (1) Subject to paragraph 25(2), where a loan is made before 6th April 2003, section 188 (loan released or written off: amount treated as earnings) applies with the following modifications.
- (2) References to the employment in relation to which a loan is an employment-related loan are to be read, in relation to times before 6th April 2003, as references to the employment referred to in section 174 (employment-related loans) as modified by paragraph 17.
- (3) In relation to times before 6th April 2003—
- in subsection (2)(c), substitute “an employment to which Chapter 2 of Part 5 of ICTA applies” for “not an excluded employment”, and
  - in subsection (3)(a), substitute “ an employment to which Chapter 2 of Part 5 of ICTA does not apply ” for “excluded employment”.

*Taxable benefits: notional loans in respect of acquisitions of shares*

- 28 Chapter 8 of Part 3 does not apply in relation to acquisitions on or before 6th April 1976.
- 29 (1) This paragraph relates to the operation of Chapter 8 of Part 3 in relation to an acquisition made before 6th April 2003.
- (2) If—
- the acquisition gave rise to a notional loan under section 162(1) of ICTA, and
  - the notional loan has not terminated under section 162(4) of ICTA before 6th April 2003,
- the condition in section 193(1) (notional loan where acquisition for less than market value) is taken to be met and section 193(3) and (4) apply accordingly.
- (3) In such a case, the amount initially outstanding of the notional loan for the purposes of Chapter 8 of Part 3 is taken to be the amount initially outstanding calculated under section 162 of ICTA in relation to the tax year 2002-03.
- (4) In such a case, section 195(3)(c) (discharge of notional loan: amount treated as earnings) applies, in relation to times before 6th April 2003, with the substitution of “an employment to which Chapter 2 of Part 5 of ICTA applies” for “not an excluded employment”.

*Taxable benefits: disposals of shares for more than market value*

F374 30 .....

**Textual Amendments**

**F374** Sch. 7 para. 30 repealed (with effect in accordance with Sch. 22 para. 46(26)(a) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(2\)](#), [Sch. 43 Pt. 3\(4\)](#)

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F375 31 .....

**Textual Amendments**

**F375** Sch. 7 para. 31 repealed (with effect in accordance with Sch. 22 para. 46(26)(a) of the amending Act) by Finance Act 2003 (c. 14), Sch. 22 para. 46(2), Sch. 43 Pt. 3(4)

*Taxable benefits: residual liability to charge*

- 32 (1) This paragraph applies in relation to Chapter 10 of Part 3.
- (2) In section 206, the references in subsection (4) and step 2 in subsection (5) to the cost of a benefit determined under section 205 are to be read as including a reference to the cost of a benefit determined under section 156(5) of ICTA.
- (3) Sections 212, 213 and 215 do not have effect in relation to any payment if—
- (a) it is made in respect of a scholarship awarded before 15th March 1983,
  - (b) the first payment in respect of the scholarship was made before 6th April 1984, and
  - (c) in relation to payments made after 5th April 1989, the person holding the scholarship (“the scholar”) is receiving full-time instruction at the university, college, school or other educational establishment at which the scholar was receiving such instruction on—
    - (i) 15th March 1983, in a case where the first payment in respect of the scholarship was made before that date, or
    - (ii) the date on which the first such payment was made, in any other case.
- (4) For the purposes of sub-paragraph (3)(c), a payment made before 6th April 1989 in respect of any period beginning on or after that date is treated as made at the beginning of that period.

**PART 4**

EMPLOYMENT INCOME: EXEMPTIONS

*Incidental overnight expenses and benefits*

- 33 In determining whether section 240(1) or (2) or 268 applies—
- (a) in the case of a period of absence which began before 6th April 2003 and ends on or after that date, or
  - (b) in the case of a period of absence which begins on or after that date and incidentally to which goods, services or money are obtained using a non-cash voucher in relation to which section 141(6C) of ICTA applies,
- the question whether for the purposes of section 241 the exemption provisions total exceeds the permitted amount is to be determined as if this Act had applied at any relevant time before that date.
- 34 In determining—
- (a) whether section 141(6C) and (6D), 142(3C) and (3D), 155(1B) and (1C) or section 200A of ICTA applies in the case of a period of absence which began before 6th April 2003 and ends on or after that date, or

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- (b) whether section 141(6C) and (6D) applies in the case of a period of absence which begins on or after that date,

the question whether the authorised maximum (as defined in section 200A(4) of ICTA) is exceeded in relation to the absence is to be determined as if in section 200A(5) after the words “exceeded by” there were inserted the words “the aggregate of the exemption provisions total in respect of the period (as defined in section 241 of ITEPA 2003) and”.

#### *Removal benefits and expenses*

- 35 (1) Section 287 (limit on exemption for removal benefits and expenses) applies with the modification in sub-paragraph (2) where—
- (a) a benefit is provided on or after 6th April 2003 in connection with a change of an employee’s residence, or
- (b) expenses are incurred on or after that day in connection with such a change, and any such benefits have been provided or expenses incurred before that date in connection with that change.

- (2) In subsection (2) before paragraph (a) insert—

“(aa) the total value to the employee immediately before 6th April 2003, as defined in paragraph 24(2) of Schedule 11A to ICTA,”.

- 36 A direction under paragraph 6(2) of Schedule 11A to ICTA (directions as to meaning of “the relevant day”) by virtue of which a day on or after 6th April 2003 was directed to be the relevant day in relation to a change of residence—
- (a) is not affected by any repeals made by this Act, but
- (b) continues in force as respects any benefit provided or expenses incurred on or after that date as if it were a direction given under section 274(2) (directions as to the limitation day), directing that day to be the limitation day.

#### *Retraining courses*

- 37 (1) The repeal of sections 588(5)(a) and 589(3) and (4) of ICTA does not affect—
- (a) the operation of section 588(5) of ICTA by virtue of paragraph (a) of that provision where liability for a tax year before 2003-04 is determined,
- (b) the operation of section 588(5) of ICTA by virtue of paragraph (b) of that provision where liability is determined on the assumption that the person undertaking the course fell within section 588(1) of ICTA in such a tax year, or
- (c) the operation of section 588(6) and (7) of ICTA as they apply by virtue of sub-paragraph (2).
- (2) In any case where there has been such a determination as is mentioned in sub-paragraph (1)(a) or (b), section 588(6) and (7) apply as if section 588(6) referred to a failure to comply with any provision of section 589(3) or (4) of ICTA instead of a failure to meet such a condition as is mentioned in section 312(1)(b)(i) or (ii) of this Act.

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### *Suggestion awards*

- 38 (1) This paragraph applies for the purpose of determining the extent, if any, to which section 321(2) (exemption of suggestion awards) applies in respect of a financial benefit award for a suggestion (“the later award”) in a case where such an award (“the earlier award”) has been made for the same suggestion on a previous occasion or occasions before the tax year 2003-04.
- (2) For the purposes of the application of section 322(3) in relation to the later award, “the residue of the suggestion maximum” means the suggestion maximum, as defined in section 322(4), less the aggregate of—
- (a) the total of the amounts exempted from income tax under section 321 in respect of financial benefit awards for the same suggestion made on previous occasions, and
  - (b) the total of the earlier awards.

## PART 5

### EMPLOYMENT INCOME: DEDUCTIONS

#### *Earnings charged on remittance*

- 39 In relation to expenses incurred before the tax year 2003-04, section 353 (deductions from earnings charged on remittance) applies as if the condition in subsection (3) of that section were that the expenses would have been deductible under section 193, 194, 195 or 198(1) of ICTA from emoluments of the office or employment if those emoluments had been chargeable under Case I of Schedule E for the tax year in which the expenses were incurred.

#### *Non-domiciled employee’s travel costs and expenses: “qualifying arrival date”*

- 40 In relation to any time before 6th April 2003, section 375 (meaning of “qualifying arrival date”) has effect as if the references in subsections (1)(a) and (4) to the person receiving earnings for duties performed in the United Kingdom included a reference to the person receiving emoluments for such duties.

## PART 6

### EMPLOYMENT INCOME: INCOME WHICH IS NOT EARNINGS OR <sup>F376</sup>RELATED TO SECURITIES]

#### **Textual Amendments**

**F376** Words in Sch. 7 Pt. 6 heading substituted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(3\)](#)

#### *Benefits from non-approved pension schemes*

- 41 (1) Chapter 2 of Part 6 (benefits from non-approved pension schemes) applies with the following modifications in relation to a benefit provided under a non-approved retirement benefits scheme which—
- (a) was entered into before 1 December 1993, and

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(b) has not been varied on or after that day with a view to the provision of the benefit.

(2) Section 393(2) does not apply.

(3) Section 394(5) does not apply.

(4) For sections 395, 396 and 397 substitute—

**“394A Pre-December 1993 schemes: chargeability of certain lump sums**

(1) Section 394 does not apply to a lump sum to the extent that the lump sum is attributable to the payment of a sum—

(a) which is deemed to be the income of a person by virtue of section 595(1) of ICTA and in respect of which that person has been assessed to tax, or

(b) which counted as the employment income of an employee by virtue of section 386(1) of this Act.

(2) For the purposes of subsection (1) it must be assumed that, unless the contrary is shown, the provision of a lump sum is not attributable to the payment of such a sum as is mentioned in that subsection.

**394B Pre-December 1993 schemes: relationship between this Chapter and Part 2**

(1) This section applies if, apart from this section, the provision of a benefit to which this Chapter applies would give rise to two amounts (“A” and “B”)—

(a) A being an amount of general earnings from an employment (see section 7), and

(b) B being an amount which is to count as employment income of an individual by virtue of section 394(1).

(2) In such a case—

(a) A constitutes general earnings from the employment, and

(b) the amount, if any, by which B exceeds A is to count as employment income of the individual by virtue of section 394(1).”

*Payments and benefits on termination of employment etc.*

42 Section 403 (charge on payment or other benefit) does not apply in relation to payments or other benefits received on or after 6th April 2003 that were brought into charge to tax before 6th April 1998.

43 (1) This paragraph applies for the purpose of determining how the £30,000 threshold referred to in sections 403 and 404 operates where—

(a) payments or other benefits to which Chapter 3 of Part 6 apply are received, and

(b) payments or benefits to which section 148 of ICTA applied were received in respect of the same person—

(i) in respect of the same employment, or

(ii) in respect of different employments with the same employer or associated employers.

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- (2) For the purposes of section 403(4) and (5), section 415 (valuation of benefits) does not apply to the payments and benefits referred to in sub-paragraph (1)(b), and their aggregate amount is to be taken to be their aggregate amount immediately before 6th April 2003.
- (3) The references in sections 403(4) and (5) and 404(3)(b) to payments or benefits to which Chapter 3 of Part 6 applies include references to the payments and benefits referred to in sub-paragraph (1)(b).
- (4) Section 404(2) (when employers are associated) applies for the purposes of this paragraph.

## PART 7

EMPLOYMENT INCOME: [<sup>F377</sup>INCOME RELATED TO SECURITIES]

### Textual Amendments

**F377** Words in Sch. 7 Pt. 7 heading substituted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(4\)](#)

*[<sup>F378</sup>Pre-6th April 2003 acquisitions*

### Textual Amendments

**F378** Sch. 7 para. 43A and cross-heading inserted (16.4.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(5\)\(26\)\(b\)](#)

- 43A (1) This paragraph relates to the operation of section 421E (exclusions from Chapters 2 to 4 of Part 7: residence) in relation to an acquisition made before 6th April 2003.
- (2) Section 421E(1) has effect with the substitution of “ the employee was not chargeable under Case I of Schedule E in respect of the employment ” for the words from “the earnings”.
  - (3) Section 421E(2) has effect with the substitution of “ the emoluments of the employment did not fall to be charged to income tax under Schedule E ” for the words from “the earnings”.]

*Conditional interests in shares*

- 44 Chapter 2 of Part 7 [<sup>F379</sup>, as originally enacted,] does not apply in relation to interests acquired before 17th March 1998.

### Textual Amendments

**F379** Words in Sch. 7 para. 44 inserted (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(6\)\(26\)\(c\)](#); [S.I. 2003/1997, art. 2](#)

- 45 (1) This paragraph relates to the operation of section 425 (cases where Chapter 2 of Part 7 does not apply) [<sup>F380</sup>, as originally enacted.]

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- (2) Section 425(1) applies in relation to any acquisition made before 6th April 2003 with the substitution of “if the person was not chargeable under Case I of Schedule E in respect of the office or employment in question” for the words from “if the earnings” onwards.

**Textual Amendments**

**F380** Words in Sch. 7 para. 45(1) inserted (1.9.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 46\(7\)\(26\)\(c\); S.I. 2003/1997, art. 2](#)

- 46 (1) This paragraph relates to the operation of section 428 (amount of charge where interest in shares ceases to be only conditional or on disposal) [<sup>F381</sup>, as originally enacted,] in relation to an acquisition made before 6th April 2003.
- (2) For the purposes of section 428(1) each of the following is a “deductible amount”—
  - (a) any amounts on which the employee has become chargeable to tax under Schedule E in respect of the acquisition of the employee’s interest; and
  - (b) any amount on which the employee has become chargeable to tax in respect of the shares under section 78 or 79 of FA 1988 (unapproved employee share schemes) by reference to an event that occurred before 6th April 2003.

**Textual Amendments**

**F381** Words in Sch. 7 para. 46(1) inserted (1.9.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 46\(8\)\(26\)\(c\); S.I. 2003/1997, art. 2](#)

<sup>F382</sup>47 . . . . .

**Textual Amendments**

**F382** Sch. 7 para. 47 repealed (10.7.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 46\(9\), Sch. 43 Pt. 3\(4\)](#)

<sup>F383</sup>48 . . . . .

**Textual Amendments**

**F383** Sch. 7 para. 48 repealed (10.7.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 46\(9\), Sch. 43 Pt. 3\(4\)](#)

*Convertible shares*

- 49 Chapter 3 of Part 7 does not apply in relation to [<sup>F384</sup> securities] acquired before 17th March 1998.

**Textual Amendments**

**F384** Word in Sch. 7 para. 49 substituted (1.9.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 46\(10\)\(26\)\(c\); S.I. 2003/1997, art. 2](#)

<sup>F385</sup>50 . . . . .



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**Textual Amendments**

**F385** Sch. 7 paras. 50-52 repealed (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(11\)\(26\)\(c\)](#), [Sch. 43 Pt. 3\(4\)](#); [S.I. 2003/1997](#), [art. 2](#)

**F385** 51 .....

**Textual Amendments**

**F385** Sch. 7 paras. 50-52 repealed (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(11\)\(26\)\(c\)](#), [Sch. 43 Pt. 3\(4\)](#); [S.I. 2003/1997](#), [art. 2](#)

**F385** 52 .....

**Textual Amendments**

**F385** Sch. 7 paras. 50-52 repealed (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(11\)\(26\)\(c\)](#), [Sch. 43 Pt. 3\(4\)](#); [S.I. 2003/1997](#), [art. 2](#)

**F386** 53 .....

**Textual Amendments**

**F386** Sch. 7 para. 53 repealed (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(12\)](#), [Sch. 43 Pt. 3\(4\)](#)

*Post-acquisition benefits from shares*

54 Chapter 4 of Part 7 [<sup>F387</sup>, both as originally enacted and as substituted by the Finance Act 2003,] does not apply in relation to shares or an interest in shares acquired before 26th October 1987, except to the extent provided by paragraph 55 (read with paragraph 56).

**Textual Amendments**

**F387** Words in Sch. 7 para. 54 inserted (16.4.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(13\)\(26\)\(b\)](#)

55 (1) Chapter 4 of Part 7 [<sup>F388</sup>, as originally enacted,] applies in relation to shares or an interest in shares acquired before 26th October 1987 if the company was not a dependent subsidiary on that date.

(2) But it so applies—

<sup>F389</sup>(a) .....

(b) subject to paragraph 56.

**Textual Amendments**

**F388** Words in Sch. 7 para. 55 inserted (16.4.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(14\)\(a\)\(26\)\(b\)](#)

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**F389** Sch. 7 para. 55(2)(a) repealed (16.4.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(14\)\(b\)\(26\)\(b\)](#), [Sch. 43 Pt. 3\(4\)](#)

56 The removal or variation of a restriction applying to shares or an interest in shares acquired before 26th October 1987 is not a chargeable event for the purposes of section 449 [<sup>F390</sup>, as originally enacted,] if paragraph 7 of Schedule 8 to FA 1973 (requirement for disposal to nominees at price not exceeding market value on termination of employment) would have applied to it.

**Textual Amendments**

**F390** Words in Sch. 7 para. 56 inserted (16.4.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(15\)\(26\)\(b\)](#)

57 Despite the repeals made by this Act—  
(a) sections 138 and 139 of ICTA (share acquisitions by directors and employees), and  
(b) section 140 of ICTA (further interpretation) as it applies for the purposes of those sections,  
continue to apply in relation to shares or interests in shares acquired before 26th October 1987.

58 (1) This paragraph relates to the operation of section 448 (cases where Chapter 4 of Part 7 does not apply) [<sup>F391</sup>, as originally enacted].  
(2) Section 448(1) applies in relation to any acquisition made before 6th April 2003 with the substitution of “if the person was not chargeable under Case I of Schedule E in respect of the office or employment in question” for the words “if the earnings” onwards.  
(3) Section 448(3) and (4) do not apply in relation to any acquisition made before 16th January 1991.

**Textual Amendments**

**F391** Words in Sch. 7 para. 58(1) inserted (16.4.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(16\)\(26\)\(b\)](#)

<sup>F392</sup>59 .....

**Textual Amendments**

**F392** Sch. 7 para. 59 repealed (16.4.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(17\)\(26\)\(b\)](#), [Sch. 43 Pt. 3\(4\)](#)

<sup>F393</sup>60 .....

**Textual Amendments**

**F393** Sch. 7 para. 60 repealed (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(18\)](#), [Sch. 43 Pt. 3\(4\)](#)

<sup>F394</sup>61 .....

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#### Textual Amendments

**F394** Sch. 7 para. 61 repealed (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(18\)](#), [Sch. 43 Pt. 3\(4\)](#)

#### <sup>F395</sup>*Securities disposed of for more than market value*

#### Textual Amendments

**F395** Sch. 7 para. 61A and cross-heading inserted (with effect in accordance with Sch. 22 para. 46(26)(a) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(19\)](#)

61A Chapter 3D of Part 7 does not apply in relation to securities, or an interest in securities, acquired on or before 6th April 1976.]

#### *Share options*

<sup>F396</sup>62 .....

#### Textual Amendments

**F396** Sch. 7 para. 62 repealed (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(20\)\(26\)\(c\)](#), [Sch. 43 Pt. 3\(4\)](#); [S.I. 2003/1997, art. 2](#)

<sup>F397</sup>63(1) This paragraph relates to the operation of section 474 (exclusions from Chapter 5 of Part 7: residence) in relation to an acquisition made before 6th April 2003.

(2) Section 474(1) has effect with the substitution of “ the employee was not chargeable under Case I of Schedule E in respect of the employment ” for the words from “the earnings”.]

#### Textual Amendments

**F397** Sch. 7 para. 63 substituted (16.4.2003 for specified purposes, otherwise 1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(21\)\(26\)\(d\)](#); [S.I. 2003/1997, art. 2](#)

64 (1) This paragraph relates to the operation of section 478 (amount of charges) in relation to a [<sup>F398</sup>securities] option [<sup>F399</sup>acquired] before 6th April 2003.

(2) For the purposes of section 478(1), any amount charged to tax under Schedule E in respect of the [<sup>F400</sup>acquisition] of the [<sup>F398</sup>securities] option is a deductible amount.

#### Textual Amendments

**F398** Word in Sch. 7 para. 64 substituted (16.4.2003 for specified purposes, otherwise 1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(22\)\(a\)\(26\)\(d\)](#); [S.I. 2003/1997, art. 2](#)

**F399** Word in Sch. 7 para. 64 substituted (16.4.2003 for specified purposes, otherwise 1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(22\)\(b\)\(26\)\(d\)](#); [S.I. 2003/1997, art. 2](#)

**F400** Word in Sch. 7 para. 64 substituted (16.4.2003 for specified purposes, otherwise 1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 46\(22\)\(c\)\(26\)\(d\)](#); [S.I. 2003/1997, art. 2](#)

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- 65 (1) This paragraph relates to the operation of section [F401]478 in relation to an event that is a chargeable event by virtue of section 477(3)(a) or (b) (acquisition of securities pursuant to an option and assignment and release of option) in the case of a share option acquired] before 6th April 2003.
- (2) For the purposes of section [F402]478(1)], if an amount was chargeable to tax under section 185(6) of ICTA (charge where option under approved share option scheme granted at a discount) in respect of the share option, so much of that amount as is attributable to the shares in question is a deductible [F402]amount].

#### Textual Amendments

**F401** Words in Sch. 7 para. 65(1) substituted (1.9.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 46\(23\)\(a\)\(26\)\(c\)](#); [S.I. 2003/1997, art. 2](#)

**F402** Word in Sch. 7 para. 65(2) substituted (1.9.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 46\(23\)\(b\)\(26\)\(c\)](#); [S.I. 2003/1997, art. 2](#)

F403 66 .....

#### Textual Amendments

**F403** Sch. 7 para. 66 repealed (1.9.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 46\(24\)\(26\)\(c\), Sch. 43 Pt. 3\(4\)](#); [S.I. 2003/1997, art. 2](#)

F404 67 .....

#### Textual Amendments

**F404** Sch. 7 para. 67 repealed (10.7.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 46\(25\), Sch. 43 Pt. 3\(4\)](#)

#### *Approved share incentive plans*

- 68 (1) This paragraph applies where, immediately before 6th April 2003, an employee share ownership plan was approved under Schedule 8 to FA 2000 (employee share ownership plans).
- (2) On and after that date the plan is to be treated as a share incentive plan (or “SIP”) approved by the Inland Revenue under Schedule 2 to this Act.
- (3) Sub-paragraph (2) has effect even if the provisions of the plan do not wholly conform with the provisions of Schedule 2 to this Act, but it has effect without prejudice to—
- paragraphs 83 and 84 of that Schedule (withdrawal of approval),
  - paragraphs 89 and 90 of that Schedule (termination of plan), and
  - any alteration of the plan.
- (4) For the purposes of paragraph 84(1)(a) of Schedule 2, as it applies to the plan, nothing is to be regarded as a disqualifying event because of a contravention of any of the requirements of that Schedule if the requirement in question does not correspond to any of the requirements of Schedule 8 to FA 2000.
- (5) Nothing in this Act affects the validity of—

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- (a) any provision of the plan which was included in it at any time before 6th April 2003 in accordance with the provisions of Schedule 8 to FA 2000 as then in force, or
    - (b) any award of shares under the plan which was made at any such time in accordance with the provisions of that Schedule as then in force.
  - (6) In this paragraph—
    - “award of shares” means the appropriation of shares to, or the acquisition of shares on behalf of, a person;
    - “employee share ownership plan” has the meaning given by paragraph 1(1) of Schedule 8 to FA 2000.
- 69
- (1) Any reference in any enactment, instrument or document—
    - (a) to an employee share ownership plan, or
    - (b) to an employee share ownership plan approved under Schedule 8 to FA 2000,is to be read as including, in relation to times after 5th April 2003, a reference to a share incentive plan or to a share incentive plan approved under Schedule 2 to this Act.
  - (2) Any reference in any enactment, instrument or document—
    - (a) to a share incentive plan (or SIP), or
    - (b) to a share incentive plan (or SIP) approved under Schedule 2 to this Act,is to be read as including, in relation to times before 6th April 2003, a reference to an employee share ownership plan or to an employee share ownership plan approved under Schedule 8 to FA 2000.
  - (3) Accordingly any reference in the SIP code to shares awarded under an approved SIP is to be read as including, in relation to times before 6th April 2003, a reference to shares awarded under a plan approved under Schedule 8 to FA 2000.
  - (4) Any reference in a plan within paragraph 68(1) to a person chargeable to tax under Case I of Schedule E is to be read as including, in relation to times after 5th April 2003, a reference to a person whose earnings fall within paragraph 8(2) of Schedule 2 to this Act.
  - (5) This paragraph—
    - (a) is without prejudice to Part 1 of this Schedule, and
    - (b) applies only in so far as the context permits.
  - (6) In this paragraph—
    - “awarded” means appropriated to, or acquired on behalf of, a person;
    - “employee share ownership plan” has the same meaning as in paragraph 68.
- 70
- Nothing in paragraph 91(4) of Schedule 2 to this Act (jointly owned companies) prevents a company being a constituent company in a group plan (within the meaning of that Schedule) if it was a participating company in that plan (within the meaning of Schedule 8 to FA 2000) immediately before 24th July 2002.

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*Approved SAYE option schemes*

- 71 (1) This paragraph applies where, immediately before 6th April 2003, a savings-related share option scheme was approved under Schedule 9 to ICTA (approved share option schemes and profit-sharing schemes).
- (2) On and after that date the scheme is to be treated as an SAYE option scheme approved by the Inland Revenue under Schedule 3 to this Act.
- (3) Sub-paragraph (2) has effect even if the provisions of the scheme do not wholly conform with the provisions of Schedule 3 to this Act, but it has effect without prejudice to—
- (a) paragraphs 42 and 43 of that Schedule (withdrawal or loss of approval), and
  - (b) any approved alteration of the scheme.
- (4) For the purposes of paragraph 42 of Schedule 3, as it applies to the scheme, nothing is to be regarded as a disqualifying event if it would not have resulted in any of the former approval requirements ceasing to be met.
- The “former approval requirements” means the requirements of Schedule 9 to ICTA by reference to which the scheme was approved.
- (5) Nothing in this Act affects the validity of—
- (a) any provision of the scheme which was included in it at any time before 6th April 2003 in accordance with the provisions of Schedule 9 to ICTA as then in force, or
  - (b) any rights obtained under the scheme which were obtained at any such time in accordance with the provisions of that Schedule as then in force.
- (6) In this paragraph “savings-related share option scheme” has the meaning given by paragraph 1(1) of Schedule 9 to ICTA.
- 72 (1) Any reference in the SAYE code to a share option granted in accordance with the provisions of an approved SAYE option scheme is to be read as including, in relation to times before 6th April 2003, a reference to a right to acquire shares obtained in accordance with the provisions of a savings-related share option scheme approved under Schedule 9 to ICTA.
- (2) Any reference in a scheme within paragraph 71(1) to a person chargeable to tax under Case I of Schedule E is to be read as including, in relation to times after 5th April 2003, a reference to a person whose earnings fall within paragraph 6(2)(c) of Schedule 3 to this Act.
- (3) This paragraph—
- (a) is without prejudice to Part 1 of this Schedule, and
  - (b) applies only in so far as the context permits.
- (4) In this paragraph “savings-related share option scheme” has the same meaning as in paragraph 71.

*Approved CSOP schemes*

- 73 (1) This paragraph applies where, immediately before 6th April 2003, a discretionary share option scheme was approved under Schedule 9 to ICTA (approved share option schemes and profit-sharing schemes).

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- (2) On and after that date the scheme is to be treated as a CSOP scheme approved by the Inland Revenue under Schedule 4 to this Act.
  - (3) Sub-paragraph (2) has effect even if the provisions of the scheme do not wholly conform with the provisions of Schedule 4 to this Act, but they are without prejudice to—
    - (a) paragraphs 30 and 31 of that Schedule (withdrawal or loss of approval), and
    - (b) any approved alteration of the scheme.
  - (4) For the purposes of paragraph 30 of Schedule 4, as it applies to the scheme, nothing is to be regarded as a disqualifying event if it would not have resulted in any of the former approval requirements ceasing to be met.

The “former approval requirements” means the requirements of Schedule 9 to ICTA by reference to which the scheme was approved.
  - (5) Nothing in this Act affects the validity of—
    - (a) any provision of the scheme which was included in it at any time before 6th April 2003 in accordance with the provisions of Schedule 9 to ICTA as then in force, or
    - (b) any rights obtained under the scheme which were obtained at any such time in accordance with the provisions of that Schedule as then in force.
  - (6) In this paragraph “discretionary share option scheme” means a share option scheme other than a savings-related share option scheme (as defined by paragraph 1(1) of Schedule 9 to ICTA).
- 74
- (1) Any reference in the CSOP code to a share option granted in accordance with the provisions of an approved CSOP scheme is to be read as including, in relation to times before 6th April 2003, a reference to a right to acquire shares obtained in accordance with the provisions of a discretionary share option scheme approved under Schedule 9 to ICTA.
  - (2) This paragraph—
    - (a) is without prejudice to Part 1 of this Schedule,
    - (b) applies only in so far as the context permits, and
    - (c) has effect subject to paragraph 75.
  - (3) In this paragraph “discretionary share option scheme” has the same meaning as in paragraph 73.
- 75
- (1) This paragraph has effect where, immediately before 6th April 2003, a discretionary share option scheme which was approved before 29th April 1996—
    - (a) is approved under Schedule 9 to ICTA, and
    - (b) has effect subject to the modifications made by paragraphs 2 and 3 of Schedule 16 to FA 1996 (scheme to have effect, despite anything included in it to the contrary, as if it contained provisions required by paragraphs 28 and 29 of Schedule 9 to ICTA: limit of £30,000 on value of shares subject to outstanding options and requirements as to price for acquisition of shares).
  - (2) On and after 6th April 2003 the scheme is to continue to have effect as if it provided—
    - (a) that an individual may not be granted share options under it which would at the time when they are granted cause the aggregate market value of the

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shares which the individual may acquire by exercising share options granted under—

- (i) the scheme, or
- (ii) any other approved CSOP scheme established by the scheme organiser or an associated company of the scheme organiser, to exceed or further exceed £30,000 (leaving out of account share options that have already been exercised), and
- (b) that the price at which shares may be acquired by the exercise of a share option granted under the scheme must not be manifestly less than the market value of shares of the same class at that time (or, if the Board of Inland Revenue and the scheme organiser agree in writing, at an earlier time or times stated in the agreement).

- (3) For the purposes of sub-paragraph (2)(a), the market value of shares is to be calculated as at—
    - (a) the time when the options relating to them were granted, or
    - (b) if an agreement relating to them has been made under paragraph 22 of Schedule 4 (requirements as to price for acquisition of shares) the earlier time or times stated in the agreement.
  - (4) Sub-paragraph (2) is subject to any amendment to the scheme made after 28th April 1996 (whether before or after 6th April 2003).
  - (5) In this paragraph “discretionary share option scheme” has the same meaning as in paragraph 73.
  - (6) Other expressions used in this paragraph and contained in the index at the end of Schedule 4 (index of expressions defined in the CSOP code) have the meaning indicated by that index.
- 76 (1) This paragraph applies to any right obtained by an individual—
- (a) under a discretionary share option scheme approved under Schedule 9 to ICTA, and
  - (b) during the period beginning with 17th July 1995 and ending with 28th April 1996,
- if, by virtue of section 115 of FA 1996 (transitional provisions which gave retrospective effect to certain amendments relating to discretionary share option schemes), the right was, immediately before 6th April 2003, treated for the purposes of sections 185 to 187 of and Schedule 9 to ICTA as having been obtained otherwise than in accordance with the provisions of a discretionary share option scheme approved under that Schedule.
- (2) For the purposes of the CSOP code, the right is to be treated as having been granted otherwise than in accordance with the provisions of an approved CSOP scheme.
  - (3) In this paragraph “discretionary share option scheme” has the same meaning as in paragraph 73.

*Enterprise management incentives*

- 77 (1) This paragraph applies where, immediately before 6th April 2003, a share option was a qualifying option for the purposes of Schedule 14 to FA 2000 (enterprise management incentives).



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- (2) On and after that date the share option is to be treated as a qualifying option for the purposes of the EMI code.
- (3) Sub-paragraph (2) has effect even if the requirements that had to be met in order for the share option, or any share option replaced by it, to be a qualifying option for the purposes of Schedule 14 to FA 2000 differed to any extent from those set out in Schedule 5.
- (4) In this paragraph “share option” means a right to acquire shares.
- 78 (1) In section 535 (disqualifying events relating to employee), subsections (2) to (6) apply to the tax year 2003-04 and later tax years (in accordance with section 723(1)).
- (2) In Schedule 14 to FA 2000 (enterprise management incentives), paragraph 52 (disqualifying events: actual relevant working time) continues to apply in relation to April 2003 for the purpose of calculating, in accordance with sub-paragraphs (3) to (5) of that paragraph, whether a disqualifying event is to be taken to have occurred at the end of the tax year 2002-03.
- (3) If a disqualifying event is to be taken to have so occurred, it (like anything else which under that Schedule is a disqualifying event immediately before 6th April 2003) is a disqualifying event for the purposes of Schedule 5 to this Act.
- 79 (1) Section 536 (other disqualifying events) has effect in relation to any alteration made to the share capital of a company before 11th May 2001 with the following modification.
- (2) In subsection (1), for paragraphs (b) and (c) substitute—
- “**(b)** any alteration to the share capital of the relevant company to which section 537 applies and is made without the prior approval of the Inland Revenue;”.
- 80 (1) Section 537 (alteration of share capital for purposes of section 536) has effect in relation to any alteration made to the share capital of a company before 11th May 2001 with the following modifications.
- (2) In subsection (1), omit “and (c)”.
- (3) In subsection (2), substitute “ This section ” for “This subsection”.
- (4) Omit subsection (3).
- 81 In a case where the qualifying option was granted before 6th April 2003, section 540(2) (no charge on acquisition of shares as taxable benefit) applies in relation to the time when the option was granted with the substitution of “the employee was chargeable to tax under Case I of Schedule E” for the words from “the earnings” onwards.
- 82 (1) This paragraph relates to the operation of section 541(2) (effects on tax charges where shares cease to be conditional only or are converted) in relation to an FA 2000 option which was exercised before 6th April 2003.
- (2) The references to a qualifying option include an FA 2000 option which was so exercised; but in relation to such an option sub-paragraph (3) applies instead of section 541(3).
- (3) For the purposes of section 541(2) “the amount of relief on the exercise of the option” means the difference between—

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- (a) the amount on which tax would have been chargeable under section 135 of ICTA (charge on exercise etc. of option) in respect of the exercise of the option apart from Schedule 14 to FA 2000 (enterprise management incentives), and
  - (b) the amount (if any) in fact so chargeable in accordance with that Schedule.
- (4) In this paragraph an “FA 2000 option” means a qualifying option for the purposes of Schedule 14 to FA 2000.

83 In Schedule 5 (enterprise management incentives), paragraph 41(6) (like other provisions of that paragraph) applies to replacement options whenever granted.

#### *Employee benefit trusts*

84 In relation to times before 6th April 2003, section 549(5) (definition of “employee” for purposes of Chapter 11 of Part 7) is to be read as referring to a person holding an office or employment whose emoluments were chargeable under Schedule E.

### **PART 8**

#### APPROVED PROFIT SHARING SCHEMES

##### *Trustees' duty to provide information*

85 Any obligation imposed in accordance with paragraph 34(b) of Schedule 9 to ICTA (trustees' duties to provide information) on the trustees of a profit sharing scheme approved under that Schedule is to be construed as an obligation, where an amount counts as employment income of a participant by reason of the occurrence of any event, to inform the participant of any facts relevant to determining the participant's resulting liability to tax.

##### *Share incentive plans*

- 86 (1) Where the trustees of an approved share incentive plan acquire shares from the trustees of an approved profit sharing scheme, the disposal and the acquisition by the trustees are treated for capital gains tax purposes as being made for such consideration as to secure that neither a gain nor a loss accrues on the disposal.
- (2) In such a case the relevant period for the purposes of paragraph 2 of Schedule 7D to TCGA 1992 is determined as if the shares had been acquired by the trustees of the share incentive plan at the time they were acquired by the trustees of the other trust.

This does not affect the date on which the trustees of the share incentive plan are treated as acquiring the shares for the purposes of taper relief.

- (3) In this paragraph—
- “approved profit sharing scheme” means a profit sharing scheme approved under Schedule 9 to ICTA, and
  - “approved share incentive plan” means a share incentive plan approved under Schedule 2 to this Act.

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*Other share schemes: eligibility of individuals and material interests*

- 87 (1) In applying any of the provisions specified in sub-paragraph (2) (which deal with the meaning of “material interest” for the purpose of determining eligibility to participate in share schemes, etc.) the following are to be disregarded—
- (a) the interest of the trustees of any profit sharing scheme approved under Schedule 9 to ICTA in any shares which are held by them in accordance with the plan but which have not been appropriated to an individual, and
  - (b) any rights exercisable by the trustees as a result of that interest.
- (2) The provisions referred to in sub-paragraph (1) are—
- (a) paragraph 20 of Schedule 2 (approved share incentive plans);
  - (b) paragraph 12 of Schedule 3 (approved SAYE option schemes);
  - (c) paragraph 10 of Schedule 4 (approved CSOP schemes);
  - (d) paragraph 29 of Schedule 5 (enterprise management incentives).

**PART 9**

SOCIAL SECURITY INCOME

*Disabled person's and working families' tax credits*

- 88 (1) This paragraph applies if, on 6th April 2003, the repeals made by TCA 2002 of the provisions listed in sub-paragraph (3) have not come fully into force.
- (2) Until the repeal of those provisions has come fully into force, Table B in section 677(1) of this Act is to be read as if it included references to disabled person's tax credit and working families' tax credit.
- (3) The provisions referred to in this paragraph are—
- (a) in SSCBA 1992, section 128 (working families' tax credit) and section 129 (disabled person's tax credit), and
  - (b) in SSCB(NI)A 1992, section 127 (working families' tax credit) and section 128 (disabled person's tax credit).

**PART 10**

PAYE

*PAYE regulations*

- 89 (1) In relation to any time before the commencement of the repeals in Part 7 of Schedule 20 to FA 1999, section 684(2) (PAYE regulations) has effect with the following modification.
- (2) At the end of item 5 insert “ including the proving of the contents or transmission of anything that the regulations allow to be transmitted to any person in electronic form or by electronic means ”.

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## PART 11

### CONSEQUENCES FOR CORPORATION TAX

- 90 (1) This paragraph applies where—
- (a) a company is charged to corporation tax by reference to an accounting period which begins before and ends on or after 6th April 2003, and
  - (b) because of a change in the law made by this Act, the income tax law relating to the accounting period is different from what it would have been if that change had not been made.
- (2) If the company so elects, this Act applies with such modifications as may be necessary to secure that the income tax law relating to the accounting period is the same as it would have been if the change in the law had not been made.
- (3) An election under this paragraph must be made by notice given to the Inland Revenue no later than the end of the period of two years beginning with the day following the last day of the accounting period.
- (4) In this paragraph “income tax law” has the same meaning as in section 9 of ICTA.
- 91 (1) This paragraph applies in relation to corporation tax charged by reference to an accounting period which begins before and ends on or after 6th April 2003.
- (2) In its application for the purposes of corporation tax, any provision of this Schedule is to be read as if—
- (a) any reference to the tax year 2003-04 were a reference to that accounting period, and
  - (b) any reference to 6th April 2003 were a reference to the first day of that accounting period.
- 92 (1) The provisions of this Act mentioned in sub-paragraph (2) do not have effect for corporation tax purposes for so much of any accounting period as falls before 6th April 2003.
- (2) The provisions are—
- (a) in Schedule 6 (consequential amendments)—
    - (i) paragraph 11 (which replaces references in section 84A of ICTA to share option schemes approved under Schedule 9 to that Act with references to SAYE option schemes and CSOP schemes approved under this Act), and
    - (ii) paragraphs 12 and 109 (which insert Schedule 4AA to ICTA (share incentive plans: corporation tax deductions)), and
  - (b) the repeal by Schedule 8 (repeals) of—
    - (i) Part 12 of Schedule 8 to FA 2000 (corporation tax deductions in relation to employee share option plans), and
    - (ii) so much of any other provision of Schedule 8 to that Act as is necessary for the operation of Part 12.
- (3) This paragraph has effect as an exception to the provision made by section 723(1)(b) (commencement of this Act for purposes of corporation tax).

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## SCHEDULE 8

Section 724

### REPEALS AND REVOCATIONS

#### PART 1

##### ACTS OF PARLIAMENT

| <i>Short title and chapter</i>               | <i>Extent of repeal</i>  |
|--|--|
| Taxes Management Act 1970 (c. 9)             | <p>In section 98, the entries in the first column of the Table relating to—</p> <ul style="list-style-type: none"><li>(a) regulations under section 202 of ICTA;</li><li>(b) paragraph 117 of Schedule 8 to FA 2000;</li><li>(c) paragraph 64 of Schedule 14 to that Act.</li></ul> <p>In section 98, the entries in the second column of the Table relating to—</p> <ul style="list-style-type: none"><li>(a) section 136(6) of ICTA;</li><li>(b) section 140G of ICTA;</li><li>(c) regulations under section 202 of ICTA;</li><li>(d) regulations under section 203 of ICTA;</li><li>(e) section 313(5) of ICTA;</li><li>(f) section 85(1) and (2) of FA 1988;</li><li>(g) paragraph 65 of Schedule 14 to FA 2000.</li></ul> |
| Income and Corporation Taxes Act 1988 (c. 1) | <p>Section 19.</p> <p>Section 58.</p> <p>In section 65(2), the words “Subject to section 330,”.</p> <p>Sections 131 to 137.</p> <p>Sections 140 to 151A.</p> <p>Sections 153 to 159AC.</p> <p>Sections 160 to 168G.</p> <p>Section 185.</p> <p>In section 186—</p> <ul style="list-style-type: none"><li>(a) in subsection (3), the words “the participant shall be chargeable to income tax under Schedule E for the year of assessment in which the entitlement arises on”;</li><li>(b) in subsection (4), the words “the participant shall be chargeable to income tax under Schedule E for</li></ul>   |

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the year of assessment in which the disposal takes place on”.

In section 187, subsections (1) to (4), (6) and (7), except so far as relating to profit sharing schemes.

Section 187A.

Sections 189 to 198.

Sections 199 to 207.

Section 313.

Sections 315 to 319.

Section 321.

Section 322(2).

In section 323—

- (a) subsection (1);
- (b) in subsection (6), paragraph (b) and the word “and” preceding it;
- (c) subsection (7).

Section 330.

Section 332(1), (2), (3A), (3B) and (4).

In section 577—

- (a) in subsection (1), paragraph (b) and the word “and” preceding it;
- (b) in subsection (3), the words from “but where-” to the end.

Section 579(1).

Section 580(3).

In section 585—

- (a) in subsection (1), the words “, or under Case III of Schedule E,”;
- (b) in subsection (9), paragraph (b) and the word “and” preceding it.

In section 588, in subsection (5), paragraph (a) and the word “or” preceding paragraph (b).

Section 589.

Section 589A(2) to (6), (10).

In section 589B—

- (a) subsections (1) to (4A);
- (b) in subsection (5), the words “this section or”.

Section 591D(6).

Section 595.

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|                                 |   |
|---------------------------------|---|
|                                 | Section 596.  |
|                                 | Sections 596A to 596C.  |
|                                 | Section 597.  |
|                                 | Section 599A(5), (6) and (8).   |
|                                 | Section 600.  |
|                                 | In section 607(3)(b), sub-paragraph (iv) and the word “and” preceding it.   |
|                                 | Section 608(4).   |
|                                 | Section 613(1) to (3).  |
|                                 | Section 615(1), (2), (4), (5) and (8).  |
|                                 | Section 616.  |
|                                 | Section 617(1) and (2).   |
|                                 | Section 617A.   |
|                                 | In section 638(13), the definition of “employee share ownership plan”.  |
|                                 | In section 643—   |
|                                 | (a) subsection (1);   |
|                                 | (b) in subsection (5), the words “shall be assessable to tax under Schedule E (and section 203 shall apply accordingly) and”. |
|                                 | Sections 647 to 648A.   |
|                                 | Section 830(5).   |
|                                 | Schedules 6, 6A, 7 and 7A.  |
|                                 | In Schedule 9—  |
|                                 | (a) Parts 1, 2 and 6, except so far as relating to profit sharing schemes;  |
|                                 | (b) Parts 3 and 4.  |
|                                 | In Schedule 10, in paragraph 7(7)(b), the second “to”.  |
|                                 | Schedules 11, 11A, 12, 12AA and 12A.  |
|                                 | In Schedule 29, paragraph 6.  |
| Social Security Act 1988 (c. 7) | In Schedule 4, paragraph 1.   |
| Finance Act 1988 (c. 39)        | Section 46.   |
|                                 | Section 47(1).  |
|                                 | Section 48(1).  |
|                                 | Section 49(1).  |
|                                 | Section 57.   |
|                                 | Section 68.   |

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|  | Section 69.  |
|  | Section 73(1).   |
|  | Sections 77 to 88.   |
|  | In section 89—   |
|  | (a) in paragraph (a), the words<br>“section 185(3)(a) (approved share<br>option schemes) and”; |
|  | (b) paragraph (b).   |
|  | Section 128.   |
|  | In Schedule 3, paragraph 4.  |
|  | In Schedule 13, paragraph 3.   |
| Finance Act 1989 (c. 26)   | Sections 36 to 42.   |
|  | Section 45.  |
|  | Sections 50 to 52.   |
|  | Section 53, except subsection (2)(f) so far as<br>relating to section 418(3) of ICTA.          |
|  | Section 62.  |
|  | Sections 64 and 66.  |
|  | In section 178(2)—   |
|  | (a) in paragraph (m), the words “160,”;  |
|  | (b) at the end of the first paragraph (p), the<br>word “and”.                                  |
|  | Section 179(1)(g) and (5).   |
|  | In Schedule 6—   |
|  | (a) paragraphs 7 to 9;   |
|  | (b) paragraph 13;  |
|  | (c) in paragraph 18(1), the words “8(2)(b)”;   |
|  | (d) paragraph 18(5) to (7).  |
|  | In Schedule 12, paragraph 8.   |
| Companies Act 1989 (c. 40)   | In Schedule 18, paragraph 46.  |
| Finance Act 1990 (c. 29)   | Section 21.  |
|  | Section 77.  |
|  | Section 79.  |
|  | In Schedule 14, paragraph 4(2).  |
| Oversea Superannuation Act 1991 (c. 16)  | Section 2.   |
| Disability Living Allowance and Disability<br>Working Allowance Act 1991 (c. 21) | In Schedule 2, paragraph 18.   |
| Finance Act 1991 (c. 31)   | Section 38(2).   |
|  | Sections 39 to 40.   |



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|   | Section 44.  |
|   | Section 69.  |
|   | In Schedule 6, paragraphs 1 and 3.   |
| Social Security Contributions and Benefits Act 1992 (c. 4)                    | Section 10(10).  |
|   | In section 150(2), in paragraph (b) of the definition of “unemployability supplement or allowance”, sub-paragraph (v). |
| Social Security (Consequential Provisions) Act 1992 (c. 6)                    | In Schedule 2, paragraph 93.   |
| Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) | Section 10(10).  |
|   | In section 146(2), in paragraph (b) of the definition of “unemployability supplement or allowance”, sub-paragraph (v). |
| Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9) | In Schedule 2, paragraph 33.   |
| Taxation of Chargeable Gains Act 1992 (c. 12)                                 | Section 120(6).  |
|   | In Schedule 10, paragraphs 14(9) to (12) and 16(3) to (5).   |
| Finance (No. 2) Act 1992 (c. 48)  | Section 37.  |
|   | Section 54.  |
| Finance Act 1993 (c. 34)  | Section 68.  |
|   | Sections 73 to 76.   |
|   | Section 105(1) and (2).  |
|   | Section 124.   |
|   | Schedules 3, 4 and 5.  |
| Finance Act 1994 (c. 9)   | Sections 88 and 89.  |
|   | Section 108(1) to (6) and (7)(b).  |
|   | Sections 109 and 110.  |
|   | Sections 125 to 132.   |
|   | Section 139.   |
| Vehicle Excise and Registration Act 1994 (c. 22)                              | In Schedule 3, paragraph 22.   |
| Finance Act 1995 (c. 4)   | Sections 43 to 45.   |
|   | Sections 91 to 93.   |
|   | Section 108.   |
|   | Section 111.   |

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|  | Section 137(2), (3) and (8).                   |
|  | Section 141.                                   |
| Jobseekers Act 1995 (c. 18)                  | In Schedule 2, paragraphs 12, 14 and 16.       |
| Child Support Act 1995 (c. 34)               | In Schedule 3, paragraph 1.                    |
| Finance Act 1996 (c. 8)                      | Sections 106 to 110.                           |
|  | Sections 113 to 115.                           |
|  | Section 120(11)(b).                            |
|  | Section 152.                                   |
|  | In Schedule 7, paragraph 5.                    |
|  | Schedule 16.                                   |
|  | In Schedule 20, paragraphs 6 to 10, 41 and 42. |
| Finance Act 1997 (c. 16)                     | Sections 62 and 63.                            |
|  | In Schedule 18, in Part 6(3), Note 3(b).       |
| Finance Act 1998 (c. 36)                     | Sections 49 to 53.                             |
|  | Section 55(1).                                 |
|  | Section 58.                                    |
|  | Sections 60 and 61.                            |
|  | Sections 63 to 69.                             |
|  | Section 93.                                    |
|  | Schedules 9 and 10.                            |
| Tax Credits Act 1999 (c. 10)                 | In Schedule 1, paragraph 6(c).                 |
| Finance Act 1999 (c. 16)                     | Sections 42 to 45.                             |
|  | Sections 48 to 51.                             |
|  | In Schedule 5, paragraphs 1 to 3.              |
|  | In Schedule 10, paragraphs 4, 5, 6 and 8.      |
| Welfare Reform and Pensions Act 1999 (c. 30) | In Schedule 8, paragraph 1(2).                 |
|  | In Schedule 12, paragraph 75.                  |
| Care Standards Act 2000 (c. 14)              | In Schedule 4, paragraph 13.                   |
| Finance Act 2000 (c. 17)                     | Section 38(5) and (7).                         |
|  | Section 47.                                    |
|  | Sections 56 to 60.                             |
|  | Section 62.                                    |
|  | Schedules 8, 10 and 11.                        |
|  | Schedule 12, except paragraphs 17 and 18.      |

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|  | Schedule 14.  |
| Capital Allowances Act 2001 (c. 2)                             | In Schedule 2, paragraphs 24, 25, 51(1) and 107.  |
| Finance Act 2001 (c. 9)  | Section 57(1) and (2).<br>Section 58.<br>Sections 60 to 62.<br>In Schedule 12—<br>(a) Part 1;<br>(b) in Part 2, paragraphs 1 to 10 and 12 to 16.<br>Schedules 13 and 14.<br>In Schedule 22, in paragraph 16(5), the definition of “PAYE regulations”. |
| Social Security Contributions (Share Options) Act 2001 (c. 20) | Section 4.  |
| International Development Act 2002 (c. 1)                      | In Schedule 3, paragraph 10.  |
| State Pension Credit Act 2002 (c. 16)                          | In Schedule 2, paragraph 28.  |
| Tax Credits Act 2002 (c. 21)                                   | Section 25(6).<br>In Schedule 3, paragraph 14.  |
| Finance Act 2002 (c. 23)                                       | Sections 33 to 37.<br>Section 38(2) and (3).<br>Section 39.<br>Section 41.<br>In section 103(4)(f), the words “in Schedule 14, paragraph 22(4)”.<br>Schedule 6.<br>In Schedule 13, in paragraph 27(1), the definition of “PAYE regulations”.          |
| Employee Share Schemes Act 2002 (c. 34)                        | The whole Act.  |

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## PART 2

### SUBORDINATE LEGISLATION

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| <i>Reference and title</i>   | <i>Extent of revocation</i> |
|--|-----------------------------|
| Disability Living Allowance and Disability Working Allowance (Northern Ireland Consequential Amendments) Order 1991 (S.I. 1991/2874) | Article 5.                  |

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|--|---|
| Income Tax (Car Benefits) (Replacement Accessories) Regulations 1994 (S.I. 1994/777)                       | The whole Regulations.  |
| Income Tax (Replacement Cars) Regulations 1994 (S.I. 1994/778)   | The whole Regulations.  |
| Income Tax (Employments) (Notional Payments) Regulations 1994 (S.I. 1994/1212)                             | In regulation 2—<br>(a) in paragraph (1), all definitions except that of “the principal Regulations”;<br>(b) paragraph (2).<br>Regulations 3 to 8A. |
| Income Tax (Employments) (Notional Payments) (Amendment) Regulations 1996 (S.I. 1996/2969)                 | The whole Regulations.  |
| Income Tax (Employments) (Notional Payments) (Amendment) Regulations 1998 (S.I. 1998/1891)                 | Regulations 4 to 6.   |
| Income Tax (Car Benefits) (Reduction of Value of Appropriate Percentage) Regulations 2001 (S.I. 2001/1123) | Regulation 8.   |
| Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629)     | Article 107.  |
| Enterprise Management Incentives (Gross Asset Requirement) Order 2001 (S.I. 2001/3799)                     | The whole Order.  |

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