



Income Tax (Earnings and Pensions) Act 2003

2003 CHAPTER 1

PART 7

[^{F1}EMPLOYMENT INCOME: INCOME AND EXEMPTIONS RELATING TO SECURITIES]

[^{F2}CHAPTER 2

RESTRICTED SECURITIES

Textual Amendments

- F2** 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

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)

- C2** [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\(4\)](#)

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Chapter 2. (See end of Document for details)

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,
 (not being provision to which subsection (2) or (3) applies).

424 Exceptions

- [^{F3}(1) 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, [^{F4}or]
 - (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
 - ^{F5}(c)]

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Chapter 2. (See end of Document for details)

[^{F6}(2) Subsection (1) does not apply if the main purpose (or one of the main purposes) of the arrangements under which the right or opportunity to acquire the employment-related securities is made available is the avoidance of tax or national insurance contributions.]

Textual Amendments

- F3** S. 424 renumbered as s. 424(1) (with effect in accordance with Sch. 2 para. 4(4) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 2 para. 4\(1\)](#)
- F4** Word in s. 424(1)(a) inserted (with effect in accordance with Sch. 2 para. 4(4) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 2 para. 4\(2\)\(a\)](#)
- F5** S. 424(1)(c) repealed (with effect in accordance with Sch. 2 para. 4(4) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 2 para. 4\(2\)\(b\)](#), [Sch. 11 Pt. 2\(1\)](#)
- F6** S. 424(2) inserted (with effect in accordance with Sch. 2 para. 4(4) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 2 para. 4\(3\)](#)

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 [^{F7}the Commissioners for Her Majesty's Revenue and Customs], and
 - (b) may not be made more than 14 days after the acquisition.
- [^{F8}(6) No election may be made under subsection (3) unless, at the time of the acquisition, the earnings from the employment are (or would be if there were any) general earnings to which any of the charging provisions of Chapters 4 and 5 of Part 2 applies.]

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Chapter 2. (See end of Document for details)

Textual Amendments

- F7** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(2\)](#); S.I. 2005/1126, art. 2(2)(h)
- F8** S. 425(6) inserted (with effect in accordance with Sch. 9 para. 48 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 9 paras. 9, 47](#)

Tax charge on post-acquisition chargeable events

426 Charge on occurrence of chargeable event

- [^{F9}(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

- F9** 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).

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Chapter 2. (See end of Document for details)

- (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 ^{F10} **Amount of charge**

- (1) The taxable amount for the purposes of section 426 (charge on occurrence of chargeable event) is—

$$\text{UMV} \times (\text{IUP} - \text{PCP} - \text{OP}) - \text{CE}$$

- (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—

$$\frac{\text{IUMV} - \text{DA}}{\text{IUMV}}$$

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—

$$\text{IUP} - \text{PCP} - \text{OP}$$

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—

$$\frac{\text{UMV} - \text{AMV}}{\text{UMV}}$$

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.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Chapter 2. (See end of Document for details)

[^{F11}(6A) CE also includes any amount that has counted as employment income of the employee in respect of the employment under Chapter 2 of Part 7A in relation to the employment-related securities where the relevant step (within the meaning of that Part) was taken before the chargeable event occurred.]

- (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 [^{F12}(other than an amount of exempt income)],
 - [^{F13}(ba) any amount treated as earnings from the employee's employment under section 226A (employee shareholder shares: amount treated as earnings) in respect of the acquisition of the employment-related securities (other than an amount of exempt income),]
 - [^{F14}(bb) any amount that was charged to non-UK income tax in respect of the acquisition of the employment-related securities, but only so far as that amount exceeds any amount within paragraph (b) or (ba),]
 - (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.

[^{F15}(7A) In subsection (7)(b) and (ba) the references to an amount of exempt income, in a case in which the amount that constituted, or was treated as, earnings in respect of the acquisition was not an amount of general earnings to which any of the charging provisions of Chapters 4 and 5 of Part 2 applied, includes any amount that would have been an amount of exempt income if any of those charging provisions had applied.

(7B) In subsection (7)(bb) “non-UK income tax” means a tax chargeable on income under the law of a territory outside the United Kingdom that corresponds to United Kingdom income tax.

(7C) A tax is not outside the scope of subsection (7B) by reason only that it—

- (a) is chargeable under the law of a province, state or other part of a country, or
- (b) is levied by or on behalf of a municipality or other local body.]

(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—

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$$\frac{CD}{AMV}$$

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.

[^{F16}(10) But subsection (9) does not apply if something which affects the employment-related securities has been done (at or before the time of the chargeable event) 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.]

Textual Amendments

- F10** The words "(other than an amount of exempt income)" inserted at the end of s. 428(2)(b) as originally enacted (with effect in accordance with s. 49(10) of the amending Act) by [Finance Act 2008 \(c. 9\), s. 49\(3\)](#)
- F11** S. 428(6A) inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\), Sch. 2 para. 15](#)
- F12** Words in s. 428(7)(b) inserted (with effect in accordance with s. 49(11) of the amending Act) by [Finance Act 2008 \(c. 9\), s. 49\(4\)](#)
- F13** S. 428(7)(ba) inserted (1.9.2013) by [Finance Act 2013 \(c. 29\), Sch. 23 paras. 5, 38; S.I. 2013/1755, art. 2](#)
- F14** S. 428(7)(bb) inserted (with effect in accordance with Sch. 9 para. 48 of the amending Act) by [Finance Act 2014 \(c. 26\), Sch. 9 paras. 10\(2\), 47](#)
- F15** S. 428(7A)-(7C) inserted (with effect in accordance with Sch. 9 para. 48 of the amending Act) by [Finance Act 2014 \(c. 26\), Sch. 9 paras. 10\(3\), 47](#)
- F16** S. 428(10) inserted (with effect in accordance with Sch. 2 para. 5(2) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), Sch. 2 para. 5](#)

[^{F17}428A] 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—
- 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
 - 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—
- 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
 - 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.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Chapter 2. (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 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 [^{F18}an officer of Revenue and Customs] 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

- F17** 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
- F18** Words in Act substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 102(1)**; S.I. 2005/1126, art. 2(2)(h)

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,
- [^{F19}(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.
- (1A) [^{F20}This subsection is satisfied unless something which affects the employment-related securities has been done (at or before the time when section 426 would apply) 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.]
- (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,

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- (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
 - (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 [^{F21}employment-related securities.]
- ^{F22}(5)

Textual Amendments

- F19** S. 429(1)(ba) inserted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), **ss. 86(2)(a)(3)(8)**, 86(1)
- F20** S. 429(1A) substituted (with effect in accordance with Sch. 2 para. 6(2) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **Sch. 2 para. 6**
- F21** 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)
- F22** 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 [^{F7}the Commissioners for Her Majesty's Revenue and Customs] , and
 - (b) may not be made more than 14 days after the chargeable event.
- [^{F23}(4) No election may be made under this section unless, at the time of the chargeable event, the earnings from the employment are (or would be if there were any) general earnings to which any of the charging provisions of Chapters 4 and 5 of Part 2 applies.]

Textual Amendments

- F7** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), **Sch. 4 para. 102(2)**; S.I. 2005/1126, art. 2(2)(h)
- F23** S. 430(4) inserted (with effect in accordance with Sch. 9 para. 48 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), **Sch. 9 paras. 11, 47**

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Chapter 2. (See end of Document for details)

[^{F24}430A] Application of this Chapter where securities exchanged for further securities

- (1) This section applies if—
- (a) an associated person disposes of the employment-related securities (“the old securities”) for consideration, otherwise than to another associated person,
 - (b) the whole or part of the consideration consists of, or includes, other securities which are restricted securities (“the new securities”) being acquired by an associated person,
 - (c) the value of the consideration determined in accordance with subsection (2) is no more than what would have been the market value of the old securities immediately before the disposal but for any restrictions, and
 - (d) the avoidance of tax or national insurance contributions is not the main purpose (or one of the main purposes) of the disposal.
- (2) The value of the consideration is the sum of—
- (a) what would have been the market value of the new securities immediately before the disposal but for any restrictions, and
 - (b) the value of the rest of the consideration (if any).
- (3) If the consideration consists partly of the new securities and partly of other consideration, the disposal is to be treated for the purposes of this Chapter as being two separate disposals as follows—
- (a) a disposal, that is a chargeable event within section 427(3)(c), of the appropriate amount of the old securities (see subsection (4)) for such of the consideration as does not consist of the new securities, and
 - (b) a disposal, to which this section applies, of the remaining old securities for consideration consisting wholly of the new securities.
- (4) In subsection (3)(a) the appropriate amount of the old securities is—
- $$OS \times \frac{OC}{TC}$$
- where—
- OS is the total number of the old securities,
- OC is the value of such of the consideration as does not consist of the new securities, and
- TC is value of the consideration determined in accordance with subsection (2).
- (5) If the consideration consists wholly of the new securities—
- (a) neither the disposal of the old securities, nor the acquisition of the new securities, gives rise to any liability to income tax,
 - (b) the disposal is not a chargeable event within section 427(3)(c), and
 - (c) this Chapter applies to the new securities as it applies to the old securities, subject to subsections (6) to (17).
- (6) Sections 425 and 431 do not apply in relation to the new securities.
- (7) If, at the time of the disposal, sections 426 to 429 do not apply to the old securities by virtue of—
- (a) an election made under section 430(1) or 431(1) in relation to the old securities, or

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Chapter 2. (See end of Document for details)

- (b) this subsection,
sections 426 to 430 do not apply to the new securities.
- (8) If there is a chargeable event for the purposes of section 426 in relation to any of the new securities, for the purposes of section 428 (amount of charge)—
 - (a) IUP (see subsection (3) of that section) is to be determined in accordance with subsection (9), and
 - (b) PCP (see subsection (4) of that section) is to be determined in accordance with subsection (10).
- (9) IUP is equal to what IUP was, for the purposes of determining the taxable amount for the purposes of section 426, in relation to chargeable events relating to the old securities that occurred before the disposal (or what it would have been had there been any such chargeable events).
- (10) PCP is the aggregate of—
 - (a) PCP determined in accordance with section 428(4), and
 - (b) what PCP would have been, for the purposes of determining the taxable amount for the purposes of section 426, if a chargeable event relating to the old securities had occurred immediately before the disposal but after any chargeable events relating to the old securities that actually did occur before the disposal.
- (11) Subsections (12) to (14) apply if—
 - (a) section 425(2) (no liability to income tax on acquisition of certain securities subject to forfeiture etc) applied in relation to the old securities, and
 - (b) at the time of the disposal, there is still a restriction relating to those securities such that they are restricted securities by virtue of section 423(2) (provision for forfeiture etc).
- (12) This Chapter has effect in relation to any of the new securities that are not restricted securities by virtue of section 423(2) as if—
 - (a) there were a restriction relating to them (“the deemed restriction”) corresponding to the restriction relating to the old securities mentioned in subsection (11)(b), and
 - (b) immediately after their acquisition, the deemed restriction were removed.
- (13) Subsection (14) applies if—
 - (a) there is a restriction by virtue of which some or all of the new securities are, at the time of the disposal, restricted securities, by virtue of subsection (2) of section 423, and
 - (b) within 5 years after the acquisition of the old securities, the restriction is not removed or varied such that the new securities to which it relates cease to be restricted securities by virtue of that subsection.
- (14) For the purposes of this Chapter the restriction mentioned in subsection (13) is to be treated as being removed 5 years after the acquisition of the old securities.
- (15) Subsection (16) applies if, at the time of the disposal—
 - (a) there is a restriction relating to the old securities such that they are restricted securities by virtue of section 423(2), and
 - (b) subsections (13) and (14) apply in relation to the old securities (including by virtue of subsection (16)).

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Chapter 2. (See end of Document for details)

- (16) Subsections (12) to (14) apply in relation to the new securities, but—
- (a) the reference in subsection (12)(a) to the restriction mentioned in subsection (11)(b) is to be read as a reference to the restriction mentioned in subsection (15)(a), and
 - (b) the references in subsections (13)(b) and (14) to the acquisition of the old securities are to be read as references to the acquisition of the original forfeitable securities.
- (17) In subsection (16) “original forfeitable securities” means the restricted securities by virtue of the application to which of section 425(2) subsections (13) and (14) apply to the old securities.
- (18) In this section references to restricted securities include a restricted interest in securities.]

Textual Amendments

F24 S. 430A inserted (17.7.2014) by virtue of [Finance Act 2014 \(c. 26\)](#), [Sch. 9 para. 36](#)

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.
- (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),
 - [^{F25}(aa) determining any amount that is to be treated as earnings from the employment where section 226A applies (employee shareholder shares: amount treated as 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), ^{F26}...
 - (d) determining any amount that counts as employment income of the employee under Chapter 5 of this Part (securities acquired pursuant to securities option) [^{F27}, and
 - (e) determining any amount that counts as employment income of the employee in respect of the employment under Chapter 2 of Part 7A (employment income provided through third parties)]

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- (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 [^{F7}the Commissioners for Her Majesty's Revenue and Customs] and
 - (b) may not be made more than 14 days after the acquisition.
- [^{F28}(6) No election may be made under this section unless, at the time of the acquisition, the earnings from the employment are (or would be if there were any) general earnings to which any of the charging provisions of Chapters 4 and 5 of Part 2 applies.]

Textual Amendments

- F7** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(2\)](#); S.I. 2005/1126, art. 2(2)(h)
- F25** S. 431(3)(aa) inserted (1.9.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 23 paras. 6, 38](#); S.I. 2013/1755, art. 2
- F26** Word in s. 431(3) omitted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 16\(a\)](#)
- F27** S. 431(3)(e) and word inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 16\(b\)](#)
- F28** S. 431(6) inserted (with effect in accordance with Sch. 9 para. 48 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 9 paras. 12, 47](#)

Modifications etc. (not altering text)

- C3** S. 431 applied (with modifications) (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 91\(2\)](#)

[^{F29}431A] Shares under [^{F30}tax advantaged] 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 [^{F31}a Schedule 2] 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 [^{F32}a Schedule 3] 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 [^{F33}a Schedule 4] 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

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- (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

- F29** 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)**
- F30** Words in s. 431A heading substituted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), **Sch. 8 paras. 47(2)**, 89 (with [Sch. 8 paras. 90-96](#))
- F31** Words in s. 431A(2)(a) substituted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), **Sch. 8 paras. 47(3)**, 89 (with [Sch. 8 paras. 90-96](#))
- F32** Words in s. 431A(2)(b) substituted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), **Sch. 8 paras. 132**, 146 (with [Sch. 8 paras. 147-157](#))
- F33** Words in s. 431A(2)(c) substituted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), **Sch. 8 paras. 193**, 204 (with [Sch. 8 paras. 205-215](#))

[^{F34} 431B Securities acquired for purpose of avoidance

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

- [^{F35}(a) the main purpose (or one of the main purposes) of the arrangements under which the right or opportunity to acquire the employment-related securities is made available is the avoidance of tax or national insurance contributions]]^{F36}, and]
- [^{F37}(b) at the time of the acquisition, the earnings from the employment are (or would be if there were any) general earnings to which any of the charging provisions of Chapters 4 and 5 of Part 2 applies.]]

Textual Amendments

- F34** S. 431B inserted (with effect in accordance with Sch. 2 para. 7(2) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **Sch. 2 para. 7(1)**
- F35** Words in s. 431B renumbered as s. 431B(a) (6.4.2015) by [The Finance Act 2014, Schedule 9 \(Employment-related Securities etc.\) \(Consequential etc. Amendments\) Regulations 2015 \(S.I. 2015/360\)](#), regs. 1(2), **2(a)**
- F36** Word in s. 431B(a) inserted (6.4.2015) by [The Finance Act 2014, Schedule 9 \(Employment-related Securities etc.\) \(Consequential etc. Amendments\) Regulations 2015 \(S.I. 2015/360\)](#), regs. 1(2), **2(b)**
- F37** S. 431B(b) inserted (6.4.2015) by [The Finance Act 2014, Schedule 9 \(Employment-related Securities etc.\) \(Consequential etc. Amendments\) Regulations 2015 \(S.I. 2015/360\)](#), regs. 1(2), **2(b)**

432 Definitions

- (1) In this Chapter—
- “interest”, in relation to securities,
- “securities”,
- “securities option”, and
- “shares”,

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- 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).]

Changes to legislation:

There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Chapter 2.