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SCHEDULES

SCHEDULE 22

EMPLOYEE SECURITIES AND OPTIONS

Main provisions

- 2 (1) For Chapter 1 of Part 7 (and the heading of that Part) substitute—

“EMPLOYMENT INCOME: INCOME AND EXEMPTIONS RELATING TO SECURITIES

CHAPTER 1

INTRODUCTION

General

Scope of Part 7

- 417 (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—

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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.

Other related provisions

418 (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).

Negative amounts treated as nil

- 419 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

Meaning of “securities” etc

- 420 (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,

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- (b) debentures, debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness,
 - (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
 - (g) rights under contracts for differences or contracts similar to contracts for differences.
- (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,
 - (c) leases and other dispositions of property and heritable securities,

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- (d) rights under contracts of insurance (within the meaning of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001), and
 - (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.

Meaning of “market value” etc

- 421 (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.

Meaning of “consideration”

- 421A) 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.
- (4) No amount is to be counted more than once in calculating the amount of any consideration.

Application of Chapters 2 to 4

Application of Chapters 2 to 4

- 421B) Subject as follows (and to any provision contained in Chapters 2 to 4) 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

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- 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 4 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 4—
- “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,
- “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).

Associated persons

- 421(I) 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.

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- (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),
- are connected or, although not connected, are 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.

Replacement and additional securities and changes in interests

- 421D(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 4 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.

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- (6) Where Chapters 2 to 4 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.

Exclusions: residence etc

- 421(E) 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 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).

Exclusions: public offers

- 421(F) Chapters 2 to 4 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.
- (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).

Exclusions: approved plan or scheme securities

- 421G Chapters 2 to 4 do not apply to—
- (a) shares awarded or acquired under an approved share incentive plan (within the meaning of Chapter 6 of this Part),

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- (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), or
- (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).

Meaning of “employee-controlled” etc

421(H) 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.

Consideration for acquisition of employment-related securities

421(I) 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

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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
 - (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

Duty to provide information

421(I) 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.

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- (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.

- (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.

Reportable events

421K) 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),

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- (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.

Persons to whom section 421J applies

421(1) This section applies for the purposes of section 421J (duty to provide information).

- (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.”.

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- (2) So far as relating to—
- (a) each of the new Chapters substituted or inserted in Part 7 by the following paragraphs, and
 - (b) each of the Chapters of that Part as originally enacted for which new Chapters are substituted by the following paragraphs,
- sub-paragraph (1) has effect in accordance with the provision made by the following paragraphs for the taking effect of the substitution or insertion.
- 3 (1) For Chapter 2 of Part 7 substitute—

“CHAPTER 2

RESTRICTED SECURITIES

Introduction

Application of this Chapter

422 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.

“Restricted securities” and “restricted interest in securities”

423 (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,

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- (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).

Exceptions

- 424 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

No charge in respect of acquisition in certain cases

- 425 (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).

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- (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.

Tax charge on post-acquisition chargeable events

Charge on occurrence of chargeable event

- 426 (1) This section applies if a chargeable event occurs in relation to the employment-related securities.
- (2) The taxable amount determined under section 428 counts as employment income of the employee for the relevant tax year.
 - (3) The “relevant tax year” is the tax year in which the chargeable event occurs.
 - (4) Section 427 explains what are chargeable events for the purposes of this section.
 - (5) This section is subject to section 429 (case outside charge under this section).

Chargeable events

- 427 (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).

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- (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.

Amount of charge

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

$$UMV \times (IUP - PCP - OP) - CE$$

- (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

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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,
 - (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.

Case outside charge under section 426

- 429 (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,
 - (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

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- a chargeable event in relation to the employment-related securities,
and
- (d) subsection (3) or (4) is satisfied.
- (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
- (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 held by or for the benefit of any of the following—
- (a) employees of the company,
- (b) persons who are related to an employee of the company,
- (c) associated companies of the company,
- (d) employees of any associated company of the company, or
- (e) persons who are related to an employee of any such associated company.
- (5) For the purposes of subsection (4) a person is related to an employee if—
- (a) the person acquired the shares pursuant to a right or opportunity available by reason of the employee's employment, or
- (b) the person is connected with a person who so acquired the shares or with the employee and acquired the shares otherwise than by or under a disposal made by way of a bargain at arm's length from the employee or another person who is related to the employee.

Election for outstanding restrictions to be ignored

- 430 (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—

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- (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.

Election for full or partial disapplication of this Chapter

431 (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),
- (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.

Definitions

432 (1) In this Chapter—

- “interest”, in relation to securities,
- “securities”,
- “securities option”, and

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“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).”
- (2) Sub-paragraph (1) has effect on and after such day as the Treasury may by order made by statutory instrument appoint but does not affect any securities, or interests in securities, acquired before 16th April 2003.
 - (3) Section 431 has effect in relation to securities, or interests in securities, acquired before the day appointed under sub-paragraph (2)—
 - (a) with the substitution in subsections (1)(b) and (2)(b) for “sections 425 to 430” of “ section 426 as originally enacted and sections 426 to 430 as substituted by paragraph 3(1) of Schedule 22 to the Finance Act 2003 ”, and
 - (b) with the substitution in subsection (5)(b) for “the acquisition” of “ the day appointed under paragraph 3(2) of Schedule 22 to the Finance Act 2003 ”.

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- (4) But sub-paragraph (3) does not apply where in relation to the securities or interest in securities an amount counts as employment income of the employee under section 427 or 449 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) as originally enacted.

Commencement Information

- II** Sch. 22 para. 3(1) in force at 1.9.2003 for the purposes of the amendment made by that sub-paragraph by [S.I. 2003/1997](#), [art. 2](#)

- 4 (1) For Chapter 3 of Part 7 substitute—

“CHAPTER 3

CONVERTIBLE SECURITIES

Introduction

Application of this Chapter

- 435 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.

“Convertible securities”

- 436 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

Adjustment of charge

- 437 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),

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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

Charge on occurrence of chargeable event

- 438 (1) This section applies if a chargeable event occurs in relation to the employment-related securities.
- (2) The taxable amount determined under section 440 counts as employment income of the employee for the relevant tax year.
- (3) The “relevant tax year” is the tax year in which the chargeable event occurs.
- (4) Section 439 explains what are chargeable events for the purposes of this section.
- (5) This section is subject to section 443 (case outside charge under this section).

Chargeable events

- 439 (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).

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Amount of charge

- 440 (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.
- (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.

Amount of gain realised on occurrence of chargeable event

- 441 (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.

Amount of consideration given for entitlement to convert

- 442 (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.

Case outside charge under section 438

- 443 (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,
 - (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.
- (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,

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- (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.
- (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 held by or for the benefit of any of the following—
- (a) employees of the company,
 - (b) persons who are related to an employee of the company,
 - (c) associated companies of the company,
 - (d) employees of any associated company of the company, or
 - (e) persons who are related to an employee of any such associated company.
- (5) For the purposes of subsection (4) a person is related to an employee if—
- (a) the person acquired the shares pursuant to a right or opportunity available by reason of the employee's employment, or
 - (b) the person is connected with a person who so acquired the shares or with the employee and acquired the shares otherwise than by or under a disposal made by way of a bargain at arm's length from the employee or another person who is related to the employee.

Supplementary

Definitions

- 444 (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).

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- (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.”.
- (2) Sub-paragraph (1) has effect on and after the day appointed under paragraph 3(2) (so that, apart from section 437, the provisions of Chapter 3 of Part 7 as substituted by that sub-paragraph apply on and after that day in relation to employment-related securities irrespective of the date of the acquisition).
- 5 (1) After Chapter 3 of Part 7 insert—

“CHAPTER 3A

SECURITIES WITH ARTIFICIALLY DEPRESSED MARKET VALUE

Introduction

Application of this Chapter

- 446A) 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

Charge on acquisition

- 446B) 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

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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),
 - (d) Chapter 3C of this Part (acquisition for less than market value), or
 - (e) Chapter 5 of this Part (acquisition pursuant to securities option).

Amount of charge

446(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).

Restricted securities and convertible securities

- 446(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.

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Other tax charges

Charge on restricted securities

- 446(E) 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), 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.
- (3) The reference in subsection (2) of section 428 (amount of charge on restricted securities) to what would be the market value of the employment-related securities is, so far as it relates to subsection (1) of that section, a reference to what would be the market value but for the reduction as a result of the things done as mentioned in subsection (2) (and but for any restrictions).
- (4) In a case within subsection (1)(b), there shall be treated as occurring on the 5th April concerned a chargeable event within section 427(3)(a) (lifting of restrictions) in relation to the employment-related securities.
- (5) “The relevant period” is the period of 7 years ending with—
- (a) in a case within subsection (1)(a), the chargeable event concerned, or
 - (b) in a case within subsection (1)(b), the 5th April concerned.
- (6) But 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, the relevant period is the period beginning 7 years before the acquisition.

Adjustment of market value: conditional interests

- 446(F) 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.

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- (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.

Adjustment of market value: consideration for entitlement to convert

- 446G) 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).

Adjustment of market value: charge on conversion

- 446H) 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).

Adjustment of consideration or benefit received

- 446I) 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),

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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).

Supplementary

Definitions

- 446(I) 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).”.
- (2) Sub-paragraph (1) has effect on and after 16th April 2003 (so that sections 446A, 446F to 446H, 446I(1)(b) to (e), (2) and (3) and 446J apply on and after that date in relation to employment-related securities irrespective of the date of the acquisition).
 - (3) Sections 446E and 446I(1)(a) do not affect any securities, or interests in securities, acquired before 16th April 2003; and, in relation to any securities or interests in

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securities acquired on or after that date but before the day appointed under paragraph 3(2), those provisions apply only on or after that appointed day.

- (4) Section 446F—
- (a) applies in relation to conditional interests in shares acquired before 16th April 2003, and
 - (b) applies during the period beginning with that date and ending with the day preceding that appointed day in relation to conditional interests in shares acquired during that period.
- 6 (1) After Chapter 3A of Part 7 (inserted by paragraph 5(1)) insert—

“CHAPTER 3B

SECURITIES WITH ARTIFICIALLY ENHANCED MARKET VALUE

Introduction

Application of this Chapter

- 446K1) 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.
- (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.

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Charge on non-commercial increases

Charge on non-commercial increases

- 446(I) 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—

IMV - 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.

Securities subject to restriction on valuation date

- 446(M) This section applies where on the valuation date the employment-related securities are relevant restricted securities.
- (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

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- (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).

Securities subject to restriction during relevant period

- 446N) 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.

Supplementary

“Relevant period” and “valuation date”

- 446O) 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.

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- (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.

Definitions

- 446P(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).
 - (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.”.
- (2) Subject as follows, sub-paragraph (1) has effect on and after 16th April 2003 (so that it applies on and after that date in relation to employment-related securities irrespective of the date of the acquisition).

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- (3) Sections 446M and 446N do not affect any securities, or interests in securities, acquired before 16th April 2003; and, in relation to any securities or interests in securities acquired on or after that date but before the day appointed under paragraph 3(2), those sections apply only on and after that appointed day.
- (4) For the purposes of section 446O employment-related securities acquired before 16th April 2003 are to be treated as acquired on that date.
- 7 (1) After Chapter 3B of Part 7 (inserted by paragraph 6(1)) insert—

“CHAPTER 3C

SECURITIES ACQUIRED FOR LESS THAN MARKET VALUE

Application of this Chapter

446Q) 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 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).

Case outside this Chapter

446R) 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, and
 - (c) subsection (3) or (4) is satisfied.
- (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.

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- (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 held by or for the benefit of any of the following—
 - (a) employees of the company,
 - (b) persons who are related to an employee of the company,
 - (c) associated companies of the company,
 - (d) employees of any associated company of the company, or
 - (e) persons who are related to an employee of any such associated company.
- (5) For the purposes of subsection (4) a person is related to an employee if—
 - (a) the person acquired the shares pursuant to a right or opportunity available by reason of the employee's employment, or
 - (b) the person is connected with a person who so acquired the shares or with the employee and acquired the shares otherwise than by or under a disposal made by way of a bargain at arm's length from the employee or another person who is related to the employee.

Notional loan

- 446(S) 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.
- (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).

Amount of notional loan

- 446(T) The amount of the notional loan initially outstanding is—

MV - DA

where—

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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.
- (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.

Discharge of notional loan

446(U) 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.

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- (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.

Chapter to be additional to other income tax charges

446V 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).

Definitions

446W) 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).
- (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—

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“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).”.

(2) Sub-paragraph (1) has effect in relation to securities, and interests in securities, acquired on or after 16th April 2003.

8 (1) After Chapter 3C of Part 7 (inserted by paragraph 7(1)) insert—

“CHAPTER 3D

SECURITIES DISPOSED OF FOR MORE THAN MARKET VALUE

Application of this Chapter

446X 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.

Amount treated as income

446Y(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,

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.

Definitions

446Z(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

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“employment-related securities”,
have the meaning indicated in section 421B(8).

(4) In this Chapter “associated person” has the meaning indicated in section 421C.”.

(2) Sub-paragraph (1) has effect in relation to securities, and interests in securities, disposed of on or after 16th April 2003.

9 (1) For Chapter 4 of Part 7 substitute—

“CHAPTER 4

POST-ACQUISITION BENEFITS FROM SECURITIES

Charge on other chargeable benefits from securities

447 (1) This Chapter applies if an associated person receives a benefit by virtue of the ownership of employment-related securities by that person or another associated person.

(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).

Amount of charge

448 The taxable amount for the purposes of section 447 (charge on other chargeable benefits) is the amount or market value of the benefit.

Case outside this Chapter

449 (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, and
- (c) subsection (2) or (3) is satisfied.

(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 held by or for the benefit of any of the following—

- (a) employees of the company,
- (b) persons who are related to an employee of the company,

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- (c) associated companies of the company,
 - (d) employees of any associated company of the company, or
 - (e) persons who are related to an employee of any such associated company.
- (4) For the purposes of subsection (3) a person is related to an employee if—
- (a) the person acquired the shares pursuant to a right or opportunity available by reason of the employee’s employment, or
 - (b) the person is connected with a person who so acquired the shares or with the employee and acquired the shares otherwise than by or under a disposal made by way of a bargain at arm’s length from the employee or another person who is related to the employee.

Definitions

- 450 (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.”.
- (2) Subject to sub-paragraph (3), sub-paragraph (1) has effect on and after 16th April 2003 (so that it applies on and after that date in relation to employment-related securities irrespective of the date of the acquisition).
- (3) The provisions of Chapter 4 as originally enacted which are mentioned in sub-paragraph (4)—
- (a) continue to apply in relation to shares, and interests in shares, acquired before 16th April 2003, and
 - (b) apply in relation to shares, and interests in shares, acquired on or after that date until the day appointed under paragraph 3(2).
- In this sub-paragraph “shares” means shares in a company or securities as defined in section 254(1) of the Taxes Act 1988 issued by a company.
- (4) The provisions are—
- section 450(1), (2), (3)(a), (4), (5) and (6)(a), and
 - sections 447 to 449, section 451, section 452(1) to (3), section 461(1) and (2), section 462, sections 464 to 466 and sections 468 to 470, so far as relevant

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for the purposes of those provisions of section 450 (or the other provisions mentioned in this subsection so far as so relevant).

10 (1) For Chapter 5 of Part 7 substitute—

“CHAPTER 5

SECURITIES OPTIONS

Introduction

Options to which this Chapter applies

- 471 (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.

Associated persons

- 472 (1) For the purposes of this Chapter the following are “associated persons” in relation to an employment-related securities option—

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- (a) the person who acquired the employment-related securities option 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 option on the acquisition or the employee (on the other),
- are connected or, although not connected, are 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.

Introduction to taxation of securities options

- 473 (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).

Cases where this Chapter does not apply

- 474 (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

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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

No charge in respect of acquisition of option

- 475 (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

Charge on occurrence of chargeable event

- 476 (1) This section applies if a chargeable event occurs in relation to an employment-related securities option.
- (2) The taxable amount determined under section 478 counts as employment income of the employee for the relevant tax year (but subject to subsection (5)).
 - (3) The “relevant tax year” is the tax year in which the chargeable event occurs.
 - (4) Section 477 explains what are chargeable events for the purposes of this section.
 - (5) If the employee has been divested of the employment-related securities option by operation of law, the person who is the relevant person in relation to the chargeable event (see section 477(7)) is chargeable to tax under Case VI of Schedule D on the amount determined under section 478.
 - (6) This section is subject to—
 - 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).

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Chargeable events

- 477 (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 in money or money’s worth in connection with the employment-related securities option (other than securities acquired pursuant to the employment-related securities option or consideration for its assignment or release).
- (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.
- (7) For the purposes of section 476(5) (charge under Case VI of Schedule D) 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.

Amount of charge

- 478 (1) The taxable amount for the purposes of section 476 (charge on occurrence of chargeable event) is—

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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.

Amount of gain realised on occurrence of chargeable event

- 479 (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
 - (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),

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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.

Deductible amounts

- 480 (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
 - (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—

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- (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.
- (7) Sections 481 and 482 (deductible amounts in respect of secondary Class 1 contributions or special contribution met by the employee) specify further deductible amounts.

Deductible amount in respect of secondary Class 1 contributions met by employee

- 481 (1) The amount calculated under subsection (2) is a deductible 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 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) The amount is the sum of—
- (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

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Class 1 contributions in respect of gains replaced by liability to pay special contribution).

(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).

Deductible amount in respect of special contribution met by employee

482 (1) The amount of the liability referred to in subsection (4) is a deductible amount 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 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.

Supplementary provisions

Application of this Chapter where option exchanged for another

483 (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—

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- (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.
- (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.

Definitions

- 484 (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), and
 - “the Contributions and Benefits Act” means SSCBA 1992 or SSCB(NI)A 1992.”.
- (2) Sub-paragraph (1) has effect—

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- (a) on and after 16th April 2003 in relation to employment-related securities options which are not share options, and
 - (b) on and after the day appointed under paragraph 3(2) in relation to employment-related securities options which are share options;
- and for this purpose “share options” means rights to acquire shares in a company or securities as defined in section 254(1) of the Taxes Act 1988 issued by a company.

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Changes and effects yet to be applied to :

- specified provision(s) savings for amendments by 2018 anaw 1, s. 6, Sch. 6 by [S.I. 2019/110 reg. 5](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 57(3) inserted by [2011 c. 11 Sch. 22 para. 4](#)
- s. 87(3)(a)(ia) inserted by [S.I. 2003/2760 Sch. para. 3\(4\)\(a\)](#) (This amendment not applied to legislation.gov.uk. The affecting S.I. is revoked and superseded by [S.I. 2003/2816](#))
- Sch. 12 para. 3(2)(aa) inserted by [2007 asp 3 Sch. 5 para. 32](#) (This effect was superseded by the repeal of Sch. 12 para. 3 by Finance Act 2008 (c. 9), s. 129(4), Sch. 43 para. 16)
- Sch. 12 para. 1A inserted by [2007 c. 15 Sch. 13 para. 147\(2\)](#) (The amending provision was repealed before coming into force.)
- Sch. 12 para. 1A omitted by [2008 c. 9 Sch. 43 para. 9](#) (The amending provision was repealed before coming into force.)