

SCHEDULES

SCHEDULE 22

EMPLOYEE SECURITIES AND OPTIONS

Main provisions

- 3 (1) For Chapter 2 of Part 7 substitute—

“CHAPTER 2

RESTRICTED SECURITIES

Introduction

422 Application of this Chapter

This Chapter applies to employment-related securities if they are—

- (a) restricted securities, or
 - (b) a restricted interest in securities,
- at the time of the acquisition.

423 “Restricted securities” and “restricted interest in securities”

- (1) For the purposes of this Chapter employment-related securities are restricted securities or a restricted interest in securities if—
 - (a) there is any contract, agreement, arrangement or condition which makes provision to which any of subsections (2) to (4) applies, and
 - (b) the market value of the employment-related securities is less than it would be but for that provision.
- (2) This subsection applies to provision under which—
 - (a) there will be a transfer, reversion or forfeiture of the employment-related securities, or (if the employment-related securities are an interest in securities) of the interest or the securities, if certain circumstances arise or do not arise,
 - (b) as a result of the transfer, reversion or forfeiture the person by whom the employment-related securities are held will cease to be beneficially entitled to the employment-related securities, and
 - (c) that person will not be entitled on the transfer, reversion or forfeiture to receive in respect of the employment-related securities an amount of at least their market value (determined as if there were no provision for transfer, reversion or forfeiture) at the time of the transfer, reversion or forfeiture.

Status: This is the original version (as it was originally enacted).

- (3) This subsection applies to provision under which there is a restriction on—
- (a) the freedom of the person by whom the employment-related securities are held to dispose of the employment-related securities or proceeds of their sale,
 - (b) the right of that person to retain the employment-related securities or proceeds of their sale, or
 - (c) any other right conferred by the employment-related securities,
- (not being provision to which subsection (2) applies).
- (4) This subsection applies to provision under which the disposal or retention of the employment-related securities, or the exercise of a right conferred by the employment-related securities, may result in a disadvantage to—
- (a) the person by whom the employment-related securities are held,
 - (b) the employee (if not the person by whom they are held), or
 - (c) any person connected with the person by whom they are held or with the employee,
- (not being provision to which subsection (2) or (3) applies).

424 Exceptions

Employment-related securities are not restricted securities or a restricted interest in securities by reason only that any one or more of the following is the case—

- (a) the employment-related securities (or the securities in which they are an interest) are unpaid or partly paid shares which may be forfeited for non-payment of calls and there is no restriction on the meeting of calls by the person by whom they are held,
- (b) that person may be required to offer for sale or transfer the employment-related securities on the employee ceasing, as a result of misconduct, to be employed by the employer or a person connected with the employer, or
- (c) the employment-related securities (or the securities in which they are an interest) may be redeemed on payment of any amount.

Tax exemption on acquisition

425 No charge in respect of acquisition in certain cases

- (1) Subsection (2) applies if the employment-related securities—
- (a) are restricted securities, or a restricted interest in securities, by virtue of subsection (2) of section 423 (provision for transfer, reversion or forfeiture) at the time of the acquisition, and
 - (b) will cease to be restricted securities, or a restricted interest in securities, by virtue of that subsection within 5 years after the acquisition (whether or not they may remain restricted securities or a restricted interest in securities by virtue of the application of subsection (3) or (4) of that section).
- (2) No liability to income tax arises in respect of the acquisition, except as provided by—

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

- (a) Chapter 3 of this Part (acquisition by conversion),
 - (b) Chapter 3C of this Part (acquisition for less than market value), or
 - (c) Chapter 5 of this Part (acquisition pursuant to securities option).
- (3) But the employer and the employee may elect that subsection (2) is not to apply to the employment-related securities.
- (4) An election under subsection (3)—
- (a) is to be made by agreement by the employer and the employee, and
 - (b) is irrevocable.
- (5) Such an agreement—
- (a) must be made in a form approved by the Board of Inland Revenue, and
 - (b) may not be made more than 14 days after the acquisition.

Tax charge on post-acquisition chargeable events

426 Charge on occurrence of chargeable event

- (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).

427 Chargeable events

- (1) This section applies for the purposes of section 426 (charge on occurrence of chargeable event).
- (2) Any of the events mentioned in subsection (3) is a “chargeable event” in relation to the employment-related securities.
- (3) The events are—
 - (a) the employment-related securities ceasing to be restricted securities, or a restricted interest in securities, in circumstances in which an associated person is beneficially entitled to the employment-related securities after the event,
 - (b) the variation of any restriction relating to the employment-related securities in such circumstances (without the employment-related securities ceasing to be restricted securities or a restricted interest in securities), and
 - (c) the disposal for consideration of the employment-related securities, or any interest in them, by an associated person otherwise than to another associated person (at a time when they are still restricted securities or a restricted interest in securities).

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

- (4) For the purposes of this Chapter there is a variation of a restriction relating to the employment-related securities if any restriction in relation to them is removed or varied.

428 Amount of charge

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

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

- (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 restricted interest in securities or the variation of a restriction relating to the employment-related securities.

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

- (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.

429 Case outside charge under section 426

- (1) Section 426 (charge on occurrence of chargeable event) does not apply if—
- (a) the employment-related securities are shares (or an interest in shares) in a company of a class,
 - (b) the provision by virtue of which the employment-related securities are restricted securities, or a restricted interest in securities, applies to all the company’s shares of the class,
 - (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.

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

- (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.

430 Election for outstanding restrictions to be ignored

- (1) The employer and the employee may elect that—
- (a) on a chargeable event the taxable amount for the purposes of section 426 is to be determined by applying section 428(1) as if it did not include a reference to OP, and
 - (b) sections 426 to 429 are not to apply to the employment-related securities after that chargeable event.
- (2) An election under this section—
- (a) is to be made by agreement by the employer and the employee, and
 - (b) is irrevocable.
- (3) Such an agreement—
- (a) must be made in a form approved by the Board of Inland Revenue, and
 - (b) may not be made more than 14 days after the chargeable event.

Supplementary

431 Election for full or partial disapplication of this Chapter

- (1) The employer and the employee may elect in relation to employment-related securities which are restricted securities or a restricted interest in securities that—
 - (a) for the relevant tax purposes their market value at the time of the acquisition is to be calculated as if they were not, and
 - (b) sections 425 to 430 are not to apply to the employment-related securities.
- (2) Or the employer and the employee may elect in relation to employment-related securities which are restricted securities or a restricted interest in securities that—
 - (a) for the relevant tax purposes their market value at the time of the acquisition is to be calculated, and
 - (b) sections 425 to 430 are to apply to the employment-related securities,as if any specified restriction did not apply to the employment-related securities.
- (3) For the purposes of subsections (1) and (2) “the relevant tax purposes” are—
 - (a) determining any amount that is to constitute earnings from the employment under Chapter 1 of Part 3 (earnings),
 - (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.

432 Definitions

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

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

- 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”.

- (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.