



Finance Act 2005

2005 CHAPTER 7

PART 2

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 3

EMPLOYMENT-RELATED SECURITIES

20 Research institution spin-out companies

- (1) In Part 7 of ITEPA 2003 (employment income: income and exemptions relating to securities), after Chapter 4 insert—

“CHAPTER 4A

SHARES IN RESEARCH INSTITUTION SPIN-OUT COMPANIES

Introduction

451 Application of this Chapter

- (1) This Chapter applies where—
- (a) an agreement is made for one or more transfers of intellectual property (an “intellectual property agreement”) from one or more research institutions to a company (a “spin-out company”),
 - (b) a person acquires shares (or an interest in shares) in the spin-out company before the intellectual property agreement is made or within the period of 183 days beginning with the date on which it is made,

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- (c) the right or opportunity to acquire the shares (or interest in shares) was available by reason of employment by the research institution (or any of them) or by the spin-out company, and
 - (d) the person is involved in research in relation to any of the intellectual property that is the subject of the intellectual property agreement.
- (2) But this Chapter does not apply if the avoidance of tax or national insurance is the main purpose (or one of the main purposes) of the arrangements under which the right or opportunity to acquire the shares (or interest in shares) is made available.

Tax relief on acquisition

452 Market value on acquisition

- (1) For the relevant tax purposes the market value of the shares (or interest in shares) at the time of the acquisition is to be calculated disregarding the effect on that market value of the intellectual property agreement and any transfer of intellectual property pursuant to it.
- (2) For the purposes of subsection (1) “the relevant tax purposes” are—
- (a) determining any amount that is to constitute earnings from the employment under Chapter 1 of Part 3 (earnings),
 - (b) determining the amount of any gain realised on the occurrence of an event that is a chargeable event by virtue of section 439(3)(a) (conversion),
 - (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).

Tax relief following acquisition

453 Taxable amount under Chapter 4

- (1) If the shares are (or interest in shares is) acquired before the intellectual property agreement is made, or before any transfer of intellectual property pursuant to it, and any benefit deriving from the intellectual property agreement or any such transfer is received by the employee in connection with the shares (or interest in shares), the taxable amount determined under section 448 (post-acquisition benefits from securities: amount of charge) is to be treated as nil.
- (2) But this section does not apply if something which affects the shares (or interest in shares) has been done (at or before the time when the intellectual property agreement is made or intellectual property is transferred) as part of a scheme or arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax or national insurance contributions.

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Disapplication of Chapters 2 and 3B

454 Deemed election for disapplication of Chapter 2

- (1) If the shares are restricted securities (or the interest in shares is a restricted interest in securities), the employer and the employee are to be treated as making an election under section 431(1) (election for disapplication of Chapter 2) in relation to the shares (or interest in shares).
- (2) But the employer and the employee may agree that subsection (1) is not to apply in relation to the shares (or interest in shares).
- (3) An agreement under subsection (2) is irrevocable and—
 - (a) must be made in a form approved by the Board of the Inland Revenue, and
 - (b) may not be made more than 14 days after the acquisition.
- (4) If the employer and the employee make an agreement under subsection (2) in relation to the shares (or interest in shares), subsection (5) applies for the purposes of determining the taxable amount for the purposes of section 426 (charge on occurrence of chargeable event) on the occurrence on any chargeable event in relation to the shares (or interest in shares).
- (5) In determining under section 428(3) (amount of charge) what would have been the market value of the shares (or interest in shares) at the time of the acquisition but for any restrictions (IUMV), that market value is to be calculated disregarding the effect on that market value of the intellectual property agreement and any transfer of intellectual property pursuant to it.

455 Disapplication of Chapter 3B

For the purposes of Chapter 3B (securities with artificially enhanced market value) neither the intellectual property agreement nor any transfer of intellectual property pursuant to it are things done otherwise than for genuine commercial purposes.

Supplementary

456 Meaning of “intellectual property” and “transfer”

- (1) In this Chapter “intellectual property” means—
 - (a) any patent, trade mark, registered design, copyright or design right, plant breeders' rights or rights under section 7 of the Plant Varieties Act 1997,
 - (b) any right under the law of a country or territory outside the United Kingdom corresponding to, or similar to, a right within paragraph (a),
 - (c) any information or technique not protected by a right within paragraph (a) or (b) but having industrial, commercial or other economic value,
 - (d) any licence or other right in respect of anything within paragraph (a), (b) or (c), or

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- (e) any goodwill (having the meaning that it has for accounting purposes) associated with anything within paragraphs (a) to (d).
- (2) The Treasury may by order amend the definition of “intellectual property” in subsection (1).
- (3) For the purposes of this Chapter a transfer of intellectual property includes—
 - (a) a sale of the intellectual property,
 - (b) the grant of a licence or other right in respect of it, and
 - (c) the assignment of a licence or other right in respect of it.

457 Meaning of “research institution”

- (1) In this Chapter “research institution” means—
 - (a) any university or other institution that is a publicly funded institution as defined in section 41(2) of the Higher Education Act 2004, or
 - (b) any institution that carries out research activities otherwise than for profit and that is neither controlled nor wholly or mainly funded by a person who carries on activities for profit.
- (2) The Treasury may by order amend subsection (1) to include in or exclude from the definition of “research institution” a person specified in the order or persons of a description specified in the order.

458 Meaning of “involved in research”

For the purposes of this Chapter a person is involved in research in relation to any intellectual property transferred or to be transferred from one or more research institutions if—

- (a) he has been actively engaged for the research institution (or any of them) in connection with research (whether as an employee or otherwise), and
- (b) that research is relevant to anything to which the intellectual property relates.

459 Transfer of intellectual property by controlled company

- (1) For the purposes of this Chapter where a research institution has control of a company, a transfer of intellectual property from the company is to be treated as a transfer from the research institution.
- (2) For the purposes of this Chapter where two or more research institutions together have control of a company, a transfer of intellectual property from the company is to be treated as a transfer from those research institutions.
- (3) In this section “control” means control within the meaning of section 416 of ICTA.

460 Definitions

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

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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) In this Chapter—
“the acquisition”,
“the employee”, and
“the employer”,
have the meaning indicated in section 421B(8).
- (4) In this Chapter—
“restricted interest in securities”, and
“restricted securities”,
have the meaning indicated in sections 423 and 424.”
- (2) In consequence of the amendment made by subsection (1), Chapter 1 of Part 7 of ITEPA 2003 (income and exemptions relating to securities: introduction) is amended as follows.
- (3) Substitute “4A” for “4” in—
(a) subsections (1), (4) and (8) of section 421B,
(b) the heading of and the heading above that section, and
(c) subsections (5) and (6) of section 421D.
- (4) In section 421K(3)(g) (reportable events), after “securities” insert “or would give rise to such an amount but for Chapter 4A (shares in research institution spin-out companies)”.
- (5) The amendments made by this section have effect in relation to shares (or an interest in shares) acquired before an agreement for the transfer of intellectual property is made, or within the period of 183 days beginning with the date on which such an agreement is made, if—
(a) the date of acquisition of the shares (or interest in shares), or
(b) the date on which the agreement was made,
or both, fell on or after 2nd December 2004.
- (6) Where section 454 of ITEPA 2003 (as inserted by subsection (1)) has effect (by virtue of subsection (5)) in relation to shares (or an interest in shares) acquired before 2nd December 2004, it applies in relation to them (or it) so as to treat the election under section 431(1) as made on that date.
- (7) Where section 454 of ITEPA 2003 (as inserted by subsection (1)) has effect (by virtue of subsection (5)) in relation to shares (or an interest in shares) acquired before 1st October 2005, it has effect with the substitution in subsection (3)(b) of that section of “later than 15th October 2005” for “more than 14 days after the acquisition of the shares (or interest in shares)”.

21 Research institution spin-out companies: pre-2nd December 2004 cases

- (1) Subsections (2) to (7) have effect where—
(a) Chapter 4A of Part 7 of ITEPA 2003 (as inserted by section 20) would apply but for subsection (5) of that section (commencement), and

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- (b) an election is made under this subsection by the employee and the employer no later than 15th October 2005.
- (2) Section 452(1) and (2)(a), (c) and (d) and section 453(1) of ITEPA 2003 apply.
- (3) But when the chargeable event occurs in relation to the shares (or interest in shares), the taxable amount counts as employment income of the employee for the tax year in which the chargeable event occurs.
- (4) The chargeable event occurs in relation to the shares (or interest in shares) on the earlier of—
- (a) the day on which there is a disposal for consideration of the shares, or any interest in them, by an associated person otherwise than to another associated person, and
 - (b) the day specified in any election made by an employee under this subsection.
- (5) The taxable amount for the purposes of subsection (3) is—
- $$MV - DA$$
- where—
- MV is the market value of the shares (or interest in shares) immediately before the occurrence of the chargeable event, and
- DA is the total of any deductible amounts.
- (6) Each of the following is a deductible amount—
- (a) the amount of any consideration given for the acquisition of the shares (or interest in shares),
 - (b) any amount that constituted earnings from the employee's employment under Chapter 1 of Part 3 of ITEPA 2003 (earnings) in respect of the acquisition of the shares (or interest in shares),
 - (c) any amount that counted as employment income in relation to the shares (or interest in shares) under Chapter 2 or 4 of Part 7 of that Act as originally enacted otherwise than by virtue of section 457 of that Act (as originally enacted) (charge on receipt of chargeable benefit),
 - (d) if the shares (or interest in shares) were (or was) acquired on a conversion of other shares (or of another interest in shares), any amount that counted as employment income of the employee under Chapter 3 of that Part (including that Chapter as originally enacted) (convertible securities) by reason of the conversion,
 - (e) if the acquisition of the shares (or interest in shares) was pursuant to a securities option, any amount that counted as employment income of the employee under section 476 of that Act (or section 476 or 477 as originally enacted) (acquisition of securities pursuant to securities option) by reason of the acquisition, and
 - (f) in the case of a chargeable event under subsection (4)(a), the amount of any expenses incurred by the holder of the shares (or interest in shares) in connection with the disposal.
- (7) An election under subsection (1) or (4) is irrevocable and must be made in a form approved by the Board of Inland Revenue.
- (8) The Treasury may by regulations modify—
- (a) this section,

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- (b) any provision of Part 4 of TCGA 1992, and
 - (c) any provision of Part 7 of ITEPA 2003,
- in relation to shares (or interests in shares) to which Chapter 4A of that Part would apply but for section 20(5) and which are restricted securities (or restricted interests in securities) or convertible securities (or interests in convertible securities).
- (9) The power conferred by subsection (8) is exercisable by statutory instrument.
 - (10) A statutory instrument containing regulations under subsection (8) is subject to annulment in pursuance of a resolution of the House of Commons.
 - (11) In this section—
 - “associated person” has the same meaning as in Chapters 1 to 5 of Part 7 of ITEPA 2003 (see section 421C of that Act),
 - “Board of Inland Revenue” has the same meaning as in that Act (see section 720(2) of that Act), and
 - “convertible securities” has the same meaning as in Chapter 3 of Part 7 of that Act (see section 436 of that Act),and expressions used in this section and in Chapter 4A of Part 7 of that Act have the same meaning in this section as in that Chapter.

22 Capital gains

- (1) TCGA 1992 is amended as follows.
- (2) In section 119A(3) (increase in expenditure by reference to tax charged in relation to employment-related securities: events giving rise to relevant income tax charge)—
 - (a) after “employment income” insert “in respect of the employment-related securities”,
 - (b) for the word “or” at the end of paragraph (c) substitute—
 - “(ca) under section 447 of ITEPA 2003 (receipt of benefit) in a case where the benefit is an increase in the market value of the employment-related securities.”,
 - (c) after paragraph (d) insert “or—
 - (e) under subsection (3) of section 21 of the Finance Act 2005 (transitional charge in relation to shares in spin-out companies) by virtue of subsection (4)(b) of that section (election by employee).”, and
 - (d) omit the words following the paragraphs.
- (3) After section 149AA insert—

“149AB Shares in research institution spin-out companies

- (1) Where an individual has acquired shares (or an interest in shares) in circumstances where section 452(1) and (2)(a) of ITEPA 2003 (shares in research institution spin-out companies: market value on acquisition) apply (and section 149AA does not apply in relation to those shares (or interest in shares)) the consideration for the acquisition shall (subject to section 119A) be taken to be equal to the aggregate of—
 - (a) the actual amount or value given for the shares (or interest in shares), and

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- (b) any amount that constituted earnings under Chapter 1 of Part 3 of ITEPA 2003 (earnings) in respect of the acquisition.
- (2) Subsection (1) above applies only to the individual making the acquisition and, accordingly, is to be disregarded in calculating the consideration received by the person from whom the shares (or interest in shares) are (or is) acquired.”
- (4) The amendment made by paragraph (b) of subsection (2) has effect only in relation to disposals on or after 6th April 2005; but the other amendments made by that subsection have effect in relation to any disposal (whether before or after the passing of this Act).
- (5) The amendment made by subsection (3) has effect in relation to any acquisition (whether before or after the passing of this Act).