

**Changes to legislation:** There are currently no known outstanding effects for the The Social Security (Contributions) Regulations 2001, PART IX. (See end of Document for details)

SCHEDULE 3

PAYMENTS TO BE DISREGARDED IN THE CALCULATION OF EARNINGS FOR THE PURPOSES OF EARNINGS-RELATED CONTRIBUTIONS

PART IX

[<sup>F1</sup>Incentives by way of securities.]

**Textual Amendments**

**F1** Sch. 3 Pt. IX heading substituted (1.9.2003) by [The Social Security \(Contributions\) \(Amendment No. 5\) Regulations 2003 \(S.I. 2003/2085\)](#), regs. 1, **12(2)**

[<sup>F2</sup>Certain payments by way of securities, restricted securities and restricted interests in securities, and gains arising from them, disregarded]

1.—[<sup>F2</sup>(1) Payments by way of securities, restricted securities and restricted interests in securities, and gains arising from them, are disregarded in the calculation of an employed earner’s earnings to the extent mentioned in this Part.]

(2) For the purposes of paragraphs 13, 15 and 16—

- (a) “body corporate” includes—
  - (i) a body corporate constituted under the law of a country or territory outside the United Kingdom, and
  - (ii) an unincorporated association wherever constituted;
- (b) “total discount” means the difference between the total value of the exercise price of the shares that are subject to the right in question and the total market value of that right;
- (c) “total market value” means the price which the shares that are subject to the right in question might reasonably be able to fetch in the open market; and
- (d) the total market value of the subsequent right is similar to the total market value of the first right if it is not substantially greater than the first right.

**Textual Amendments**

**F2** Sch. 3 para. 1 heading substituted (1.9.2003) by [The Social Security \(Contributions\) \(Amendment No. 5\) Regulations 2003 \(S.I. 2003/2085\)](#), regs. 1, **12(3)**

**Shares in secondary contributor or associated body**

<sup>F3</sup>2. ....

**Textual Amendments**

**F3** Sch. 3 para. 2 omitted (1.9.2003) by virtue of [The Social Security \(Contributions\) \(Amendment No. 5\) Regulations 2003 \(S.I. 2003/2085\)](#), regs. 1, **12(4)**

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**[<sup>F4</sup> Rights to acquire securities**

3. A payment by way of a right to acquire securities.]

**Textual Amendments**

**F4** Sch. 3 para. 3 heading substituted (1.9.2003) by [The Social Security \(Contributions\) \(Amendment No. 5\) Regulations 2003 \(S.I. 2003/2085\)](#), regs. 1, **12(5)**

**“Short” share options granted on or after 6th April 1999**

**<sup>F5</sup>3A.** . . . . .

**Textual Amendments**

**F5** Sch. 3 para. 3A omitted (1.9.2003) by virtue of [The Social Security \(Contributions\) \(Amendment No. 5\) Regulations 2003 \(S.I. 2003/2085\)](#), regs. 1, **12(6)**

**Enterprise management incentives**

**<sup>F6</sup>4.** . . . . .

**Textual Amendments**

**F6** Sch. 3 para. 4 omitted (1.9.2003) by virtue of [The Social Security \(Contributions\) \(Amendment No. 5\) Regulations 2003 \(S.I. 2003/2085\)](#), regs. 1, **12(6)**

**[<sup>F7</sup> Priority share allocations]**

[<sup>F7</sup>5. A payment by way of an allocation of shares in priority to members of the public in respect of which no liability to income tax arises by virtue of section 542 of ITEPA 2003.]

**Textual Amendments**

**F7** Sch. 3 para. 5 heading substituted (1.9.2003) by [The Social Security \(Contributions\) \(Amendment No. 5\) Regulations 2003 \(S.I. 2003/2085\)](#), regs. 1, **12(7)**

**Partnership share agreements**

6. A payment that is deducted from the earnings of the employment under a partnership share agreement.

Here “partnership share agreement” has the meaning given in [<sup>F8</sup> paragraph 44 of Schedule 2 to ITEPA 2003.]

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**Textual Amendments**

**F8** Words in Sch. 3 para. 6 substituted (1.9.2003) by [The Social Security \(Contributions\) \(Amendment No. 5\) Regulations 2003 \(S.I. 2003/2085\)](#), regs. 1, **12(8)**

**Textual Amendments**

**F8** Words in Sch. 3 para. 6 substituted (1.9.2003) by [The Social Security \(Contributions\) \(Amendment No. 5\) Regulations 2003 \(S.I. 2003/2085\)](#), regs. 1, **12(8)**

**[<sup>F9</sup>Shares under share incentive plans**

7. A payment by way of an award of shares under a share incentive plan within the meaning of Schedule 2 to ITEPA 2003.

**Textual Amendments**

**F9** Sch. 3 paras. 7-7A heading substituted for Sch. 3 para. 7 (1.9.2003) by [The Social Security \(Contributions\) \(Amendment No. 5\) Regulations 2003 \(S.I. 2003/2085\)](#), regs. 1, **12(9)**

**Securities and interests in securities which are not readily convertible assets**

7A. A payment by way of the acquisition of securities, interests in securities or securities options in connection with employed earner’s employment if, or to the extent that, what is acquired is not a readily convertible asset.

Here “acquisition” includes acquisition pursuant to an employment-related securities option within the meaning of section 471(5) of ITEPA 2003 as substituted by the Finance Act 2003.]

**Textual Amendments**

**F9** Sch. 3 paras. 7-7A heading substituted for Sch. 3 para. 7 (1.9.2003) by [The Social Security \(Contributions\) \(Amendment No. 5\) Regulations 2003 \(S.I. 2003/2085\)](#), regs. 1, **12(9)**

**Shares under approved profit sharing schemes**

<sup>F10</sup>8. ....

**Textual Amendments**

**F10** Sch. 3 para. 8 omitted (1.9.2003) by virtue of [The Social Security \(Contributions\) \(Amendment No. 5\) Regulations 2003 \(S.I. 2003/2085\)](#), regs. 1, **12(10)**

**[<sup>F11</sup>Restricted securities and restricted interests in securities**

9.—(1) A payment by way of the acquisition of restricted securities, or a restricted interest in securities, where those securities are, or that interest is, employment-related, if no charge to income tax arises under section 425 of ITEPA 2003 other than by virtue of subsection (2) of that section.

This is subject to the following qualification.

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(2) This paragraph does not apply if an election has been made as mentioned in subsection (3) of section 425 of ITEPA 2003.

(3) References in this paragraph to section 425 of ITEPA 2003 are to that section as substituted by paragraph 3(1) of Schedule 22 to the Finance Act 2003.]

**Textual Amendments**

**F11** Sch. 3 para. 9 heading substituted (1.9.2003) by [The Social Security \(Contributions\) \(Amendment No. 5\) Regulations 2003 \(S.I. 2003/2085\)](#), regs. 1, **12(11)**

**Conditional interest in shares: gains from exercise etc. of share options**

<sup>F12</sup>**10.** .....

**Textual Amendments**

**F12** Sch. 3 paras. 10-15 omitted (1.9.2003) by virtue of [The Social Security \(Contributions\) \(Amendment No. 5\) Regulations 2003 \(S.I. 2003/2085\)](#), regs. 1, **12(12)**

**Convertible shares**

<sup>F12</sup>**11.** .....

**Textual Amendments**

**F12** Sch. 3 paras. 10-15 omitted (1.9.2003) by virtue of [The Social Security \(Contributions\) \(Amendment No. 5\) Regulations 2003 \(S.I. 2003/2085\)](#), regs. 1, **12(12)**

**Convertible shares: gains from the exercise etc. of share options**

<sup>F12</sup>**12.** .....

**Textual Amendments**

**F12** Sch. 3 paras. 10-15 omitted (1.9.2003) by virtue of [The Social Security \(Contributions\) \(Amendment No. 5\) Regulations 2003 \(S.I. 2003/2085\)](#), regs. 1, **12(12)**

**Share option gains by directors and employees**

<sup>F12</sup>**13.** .....

**Textual Amendments**

**F12** Sch. 3 paras. 10-15 omitted (1.9.2003) by virtue of [The Social Security \(Contributions\) \(Amendment No. 5\) Regulations 2003 \(S.I. 2003/2085\)](#), regs. 1, **12(12)**

## Shares acquired under options granted before 9th April 1998

<sup>F12</sup>14. ....

### Textual Amendments

**F12** Sch. 3 paras. 10-15 omitted (1.9.2003) by virtue of [The Social Security \(Contributions\) \(Amendment No. 5\) Regulations 2003 \(S.I. 2003/2085\)](#), regs. 1, **12(12)**

## Assignment or release of option

<sup>F12</sup>15. ....

### Textual Amendments

**F12** Sch. 3 paras. 10-15 omitted (1.9.2003) by virtue of [The Social Security \(Contributions\) \(Amendment No. 5\) Regulations 2003 \(S.I. 2003/2085\)](#), regs. 1, **12(12)**

## <sup>F13</sup> Exercise of replacement share options where original option acquired before 6th April 1999

**16.**—(1) A gain realised by the exercise of a replacement right to acquire shares in a body corporate where the original right was obtained before 6th April 1999 provided that—

- (a) sub-paragraph (4) is satisfied, and
- (b) paragraph 17 does not apply,

The disregard conferred by this paragraph is subject to the following limitation.

(2) Only the value of the shares acquired by the exercise of the replacement right shall be disregarded.

(3) In this paragraph and paragraph 17—

“the original right” means the right, acquired before 6th April 1999, to acquire shares in a body corporate; and

“replacement right” means a right to acquire shares, obtained, whether as the result of one transaction or a series of transactions, and whether directly or indirectly, in consequence of—

- (a) the assignment or release of the original right; or
- (b) the assignment or release of a right which was itself obtained in consequence of the assignment or release of that right.

(4) This sub-paragraph is satisfied in respect of a transaction through which the replacement right was obtained if **A** is not substantially greater than **R**.

Here—

**A** is the market value of the shares which may be obtained by the exercise of the right acquired on that occasion, less any consideration which would have to be given on that occasion by or on behalf of the earner if that right were to be exercised immediately after its acquisition (disregarding any restriction on its exercise); and

**R** is the market value of the shares subject to the right assigned or released on that occasion, immediately before that occasion, less any consideration which would have been required to be given by or on behalf of the earner for the exercise of that right, disregarding any restriction on its exercise, subject to the following qualification.

If a transaction involves only a partial replacement of an earlier right, the amount of the earlier consideration to be deducted in computing R shall be proportionately reduced.]

#### Textual Amendments

**F13** Sch. 3 paras. 16-16A heading substituted for Sch. 3 para. 16 (1.9.2003) by [The Social Security \(Contributions\) \(Amendment No. 5\) Regulations 2003 \(S.I. 2003/2085\)](#), regs. 1, **12(13)**

#### [<sup>F14</sup>Payments resulting from exercise, assignment or release of options which are not disregarded by virtue of paragraph 16

17.—(1) This paragraph applies to a payment—

- (a) made on or after 10th April 2003, and
- (b) which would otherwise fall to be disregarded by virtue of paragraph 16 [<sup>F15</sup>or 16A] of this Part,

where the market value of the shares has been increased by more than 10% by things done, on or after 6th April 1999, otherwise than for genuine commercial purposes.

(2) For the purposes of sub-paragraph (1) “the shares” includes—

- (a) the shares subject to the right currently being exercised; and
- (b) where the right to acquire shares held on 6th April 1999 has been replaced by a [<sup>F16</sup>replacement right], includes the shares subject to [<sup>F17</sup>a replacement right.]

(3) The following are among the things that are, for the purposes of this paragraph, 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 of contributions under the Act; and
- (b) any transaction between companies which, at the time of the transaction, 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.

(4) But sub-paragraph (3)(b) does not apply to a payment for group relief within the meaning given in section 402(6) of the Taxes Act.

(5) In sub-paragraph (3)(b) “group” means a body corporate and its 51% subsidiaries (within the meaning of section 838 of the Taxes Act), and other expressions used in this paragraph which are defined in, or for the purposes of, paragraph 16 have the same meaning here as they have in that paragraph.]

#### Textual Amendments

**F14** Sch. 3 para. 17 added (10.4.2003) by [The Social Security \(Contributions\) \(Amendment No. 3\) Regulations 2003 \(S.I. 2003/1059\)](#), regs. 1(1), **4(3)**

**F15** Words in Sch. 3 para. 17(1)(b) inserted (1.9.2003) by [The Social Security \(Contributions\) \(Amendment No. 5\) Regulations 2003 \(S.I. 2003/2085\)](#), regs. 1, **12(14)(a)**

**F16** Words in Sch. 3 para. 17(2)(b) substituted (1.9.2003) by [The Social Security \(Contributions\) \(Amendment No. 5\) Regulations 2003 \(S.I. 2003/2085\)](#), regs. 1, **12(14)(b)(i)**

**F17** Words in Sch. 3 para. 17(2)(b) substituted (1.9.2003) by [The Social Security \(Contributions\) \(Amendment No. 5\) Regulations 2003 \(S.I. 2003/2085\)](#), regs. 1, **12(14)(b)(ii)**

**[<sup>F18</sup> Payments made to internationally mobile employees**

**18.**—(1) So much of any payment as equals the amount in sub-paragraph (3).

(2) For the purposes of calculating the amount in sub-paragraph (3) treat amounts which count as employment income under Chapters 2 to 5 of Part 7 of ITEPA 2003 as having been paid in equal instalments on each day of the “relevant period” as determined in accordance with section 41G of ITEPA 2003.

(3) The amount in this sub-paragraph is calculated by adding together every instalment which would satisfy the condition in sub-paragraph (4), (5) or (6) on the day on which the instalment is treated as having been paid.

(4) The condition in this sub-paragraph is that the instalment does not give rise to a liability to pay earnings-related contributions because the employed earner does not fulfil the prescribed conditions as to residence or presence in Great Britain or Northern Ireland (as the case requires) set out in paragraph (1) of regulation 145 or because the proviso in paragraph (2) of that regulation applies.

(5) The condition in this sub-paragraph is that the instalment does not give rise to a liability to pay earnings-related contributions because the employed earner is determined in accordance with Title II of Regulation No (EC) 883/2004 and Title II of Regulation No (EC) 987/2009 to be subject only to the legislation of another EEA State or Switzerland.

(6) The condition in this sub-paragraph is that the instalment does not give rise to a liability to pay earnings-related contributions because the employed earner is determined to be subject only to the legislation of a country outside the United Kingdom pursuant to an Order in Council having effect under section 179 of the Administration Act.]

**Textual Amendments**

**F18** Sch. 3 para. 18 inserted (6.4.2015) by The Social Security (Miscellaneous Amendments No. 2) Regulations 2015 (S.I. 2015/478), regs. 1(4), **21(3)**

**Changes to legislation:**

There are currently no known outstanding effects for the The Social Security (Contributions) Regulations 2001, PART IX.