

Bill 5

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TO

Restate, with minor changes, certain enactments relating to corporation tax []; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

OTHER RELIEF FOR EMPLOYEE SHARE ACQUISITIONS

CHAPTER 1

OVERVIEW AND INTERPRETATION

Overview

1 Overview of Part [j4201rm]

- (1) This Part provides for corporation tax relief in relation to employee share acquisitions.

Origin: Drafting.

- (2) Sections 2 to 6 relate to the interpretation of this Part.

Origin: Drafting.

- (3) Chapter 2 provides for relief if shares are acquired by an employee or another person because of the employee’s employment by a company.

Origin: Drafting.

- (4) Chapter 3 provides for relief if—

- (a) an employee or another person obtains an option to acquire shares because of the employee’s employment by a company, and
(b) shares are acquired pursuant to the option.

[Origin: Drafting.](#)

- (5) Chapter 4 provides for additional relief in cases involving restricted shares.

[Origin: Drafting.](#)

- (6) Chapter 5 provides for additional relief in cases involving convertible shares or convertible securities that are not shares.

[Origin: Drafting.](#)

- (7) Chapter 6 deals with the relationship between the reliefs under this Part and other reliefs.

[Origin: Drafting.](#)

Interpretation

2 Meaning of “employment” [j4201Brm]

- (1) This section applies for the purposes of this Part.

[Origin: Drafting.](#)

- (2) “Employment” includes a former or prospective employment.

[Origin: FA 2003 Sch.23 para.26.](#)

- (3) References to employment by a company include references to holding an office with a company.

[Origin: FA 2003 Sch.23 para.26.](#)

- (4) Members of a company whose affairs are managed by its members are treated as holding an office with the company.

[Origin: FA 2003 Sch.23 para.26.](#)

3 Meaning of “shares” etc [j4201CArm]

- (1) In this Part “shares” includes –
 (a) an interest in shares, and
 (b) stock and an interest in stock.

[Origin: FA 2003 Sch.23 para.30.](#)

- (2) For the purposes of this Part shares are acquired by a person when the person acquires a beneficial interest in them (and not, if different, when they are conveyed or transferred).

[Origin: FA 2003 Sch.23 paras.10\(2\), 17\(2\), 22\(4\), 22D\(4\); drafting.](#)

4 Meaning of “the UK conditions” [j4201BArm]

- (1) In this Part “the UK conditions” is to be read in accordance with subsection (2).

[Origin: Drafting.](#)

- (2) A person meets the UK conditions in relation to the person’s employment by a company if –

- (a) the person is UK resident and ordinarily UK resident, and
- (b) the duties of the employment are performed in the United Kingdom.

Origin: FA 2003 Sch.23 paras.7(2), 14(2), 20(4), 21(11), 22C(10).

5 Groups of companies etc [j4201Crm]

- (1) This section applies for the purposes of this Part.

Origin: Drafting.

- (2) Two companies are members of the same group if one is a 51% subsidiary of the other or both are 51% subsidiaries of a third company.

Origin: FA 2003 Sch.23 para.28.

- (3) “Group transfer” means a transfer of a business, or a part of a business, from one company that is a member of a group to another company that is a member of the group.

Origin: FA 2003 Sch.23 para.23(2).

- (4) A company is a parent company of another company if that other company is its 51% subsidiary.

Origin: FA 2003 Sch.23 para.28.

- (5) A company (“the consortium company”) is owned by a consortium if –
- (a) 5 or fewer companies (“the shareholding companies”) between them beneficially own at least 75% of the consortium company’s ordinary share capital, and
 - (b) each of the shareholding companies beneficially owns at least 10% of that capital.

Origin: FA 2003 Sch.23 para.29(1).

- (6) Each shareholding company is a member of the consortium.

Origin: FA 2003 Sch.23 para.29(1).

- (7) For the purposes of subsection (5) the shareholdings of members of a group of companies are treated as held by a single company.

Origin: FA 2003 Sch.23 para.29(1).

- (8) And, in such a case, a member of the group of companies is a member of the consortium if the member beneficially owns some of the consortium company’s ordinary share capital.

Origin: FA 2003 Sch.23 para.29(1); drafting.

- (9) “Commercial association of companies” means a company together with such of its associated companies (as defined in section 416 of ICTA) as carry on businesses that are of such a nature that the businesses of the company and the associated companies, taken together, may be reasonably considered to make up a single composite undertaking.

Origin: FA 2003 Sch.23 para.29(2).

6 Other definitions [j4201Drm]

In this Part –

- “control” has the meaning given by section 840 of ICTA,
- “convertible securities” has the same meaning as in Chapter 3 of Part 7 of ITEPA 2003 (see section 436 of that Act),
- “convertible shares” means shares that are –
 - (a) convertible securities, or
 - (b) an interest in convertible securities,
- “the employee” has the meaning given by section 8(1)(a) or 16(1)(a) (as the case may be),
- “the employing company” has the meaning given by section 8(1) or 16(1) (as the case may be),
- “market value” has the same meaning as in TCGA 1992 (see sections 272 and 273 of that Act),
- “option” includes any right to acquire shares,
- “ordinary shares” means shares forming part of a company’s ordinary share capital,
- “the qualifying business” has the meaning given by section 8(2) or 16(2) (as the case may be),
- “the recipient” has the meaning given by section 8(1) or 16(1) (as the case may be),
- “the relevant employment” has the meaning given by section 8(2) or 16(2) (as the case may be), and
- “restricted shares” means shares that are –
 - (a) restricted securities, or
 - (b) a restricted interest in securities,
 for the purposes of Chapter 2 of Part 7 of ITEPA 2003 (see sections 423 and 424 of that Act).

Origin: FA 2003 Sch.23 paras.19, 22B(1), (3), 30; drafting.

CHAPTER 2

RELIEF IF SHARES ACQUIRED BY EMPLOYEE OR OTHER PERSON

Overview

7 Overview of Chapter 2 [j4202Arm]

- (1) This Chapter provides for relief if shares are acquired by an employee or another person because of the employee’s employment by a company.

Origin: Drafting.

- (2) Sections 8 to 10 set out the requirements that must be met for relief to be available.

Origin: Drafting.

- (3) Sections 11 to 13 set out how the amount of relief is calculated.

Origin: Drafting.

- (4) Section 14 sets out how the relief is given.

Origin: Drafting.

Requirements to be met for relief to be available

8 Basic requirements for relief under Chapter 2 [j4202rm]

- (1) Relief under this Chapter is available to a company (“the employing company”) if—
- (a) a person (“the employee”) is employed by the employing company,
 - (b) the employee or another person acquires shares as mentioned in subsection (2),
 - (c) the conditions set out in sections 9 and 10 are met as mentioned in those sections, and
 - (d) relief under Chapter 3 is not available to the employing company in relation to the acquisition of the shares.

The person who acquires the shares is referred to in that capacity as “the recipient”.

Origin: FA 2003 Sch.23 paras.1(1), (3), 2, 21(2), 22C(2); drafting.

- (2) The shares must have been acquired because of the employee’s employment by the employing company in relation to a business (or part of a business) within subsection (3).

The employee’s employment is referred to as “the relevant employment” and the business (or part) within subsection (3) is referred to as “the qualifying business”.

Origin: FA 2003 Sch.23 paras.1(1), (3), 2; drafting.

- (3) A business is within this subsection so far as—
- (a) the business is carried on by the employing company, and
 - (b) the employing company is within the charge to corporation tax in relation to the profits of the business.

Origin: FA 2003 Sch.23 para.3.

9 Conditions to be met in relation to the shares acquired [j4203rm]

- (1) The following conditions must be met in relation to the shares acquired.

Condition 1

The shares are ordinary shares that are fully paid-up and not redeemable.

Condition 2

The shares are—

- (a) shares of a class listed on a recognised stock exchange,
- (b) shares in a company that is not under the control of another company, or
- (c) shares in a company that is under the control of another company (other than an excluded company) whose shares are listed on a recognised stock exchange.

A company is excluded if it is a close company or would be a close company if it were UK resident.

Condition 3

The shares are shares in –

- (a) the employing company,
- (b) a company that, when the shares are acquired, is a parent company of the employing company,
- (c) a company that, when the shares are acquired, is a member of a consortium that owns the employing company or a parent company within paragraph (b), or
- (d) a company within subsection (2).

Origin: FA 2003 Sch.23 paras.4, 6.

- (2) A company (“company A”) is within this subsection if when the shares are acquired –
- (a) the employing company or a parent company within paragraph (b) of condition 3 is a member of a consortium that owns another company (“company B”), and
 - (b) company A is –
 - (i) a member of that consortium or a parent company of a member of that consortium, and
 - (ii) a member of the same commercial association of companies as company B.

Origin: FA 2003 Sch.23 para.6.

10 Conditions to be met in relation to employee’s income tax position [j4204rm]

- (1) If the shares acquired are not restricted shares, the following conditions must be met in relation to the income tax position of the employee.

Condition 1

The employee is subject to a charge under ITEPA 2003 in relation to the acquisition of the shares.

Condition 2

Section 446UA of ITEPA 2003 does not apply in relation to the shares.

Origin: FA 2003 Sch.23 para.7(1), (3).

- (2) If the shares acquired are restricted shares, the following condition must be met in relation to the income tax position of the employee.

The Condition

The employee –

- (a) has, as a result of the acquisition of the shares, earnings within Chapter 1 of Part 3 of ITEPA 2003 from the relevant employment that are subject to the charge under Part 2 of that Act, or
- (b) is not within paragraph (a) but will be subject to a charge under ITEPA 2003 as a result of section 426 of that Act if an event occurs in relation to the shares that is a chargeable event for the purposes of that section.

Origin: FA 2003 Sch.23 para.20(1), (2).

- (3) Subsection (4) applies if—
- (a) the conditions are, or the condition is, not met, but
 - (b) the conditions or the condition would be met if at all material times the employee had met the UK conditions in relation to the relevant employment.

Origin: FA 2003 Sch.23 paras.7(1), (2), 20(2), (4), 21(11), 22C(10).

- (4) This Chapter applies as if the employee had met the UK conditions as mentioned in subsection (3)(b).

Origin: FA 2003 Sch.23 paras.7(1), (2), 20(2), (4), 21(11), 22C(10).

Calculation of amount of relief

11 Calculation of amount of relief if shares are neither restricted nor convertible **[j4205Arm]**

- (1) If the shares acquired are neither restricted shares nor convertible shares, the amount of relief to be given is an amount equal to—
- (a) the market value of the shares when they are acquired, less
 - (b) the total amount or value of any consideration given by any person in relation to the acquisition of the shares.

This is subject to section 13.

Origin: FA 2003 Sch.23 paras.8(1), 18.

- (2) The consideration mentioned in subsection (1)(b) does not include the performance of any duties of, or in connection with, the relevant employment.

Origin: FA 2003 Sch.23 para.8(2).

- (3) A just and reasonable apportionment is made if any consideration is given partly in relation to the acquisition of the shares and partly in relation to other matters.

Origin: FA 2003 Sch.23 para.8(3).

12 Calculation of amount of relief if shares are restricted or convertible **[j4205Brm]**

- (1) If the shares acquired are restricted shares or convertible shares (or both), the amount of relief to be given is calculated as follows.

This is subject to section 13.

Origin: Drafting.

- (2) The amount of relief is equal to the amount that, as a result of the acquisition of the shares, is earnings of the employee within Chapter 1 of Part 3 of ITEPA 2003 from the relevant employment that are subject to the charge under Part 2 of that Act.

Origin: FA 2003 Sch.23 para.21(3), 22C(3); drafting.

- (3) If the shares are convertible shares, for the purposes of subsection (2) calculate their market value as if they were not convertible shares.

Origin: FA 2003 Sch.23 para.21(3), 22C(3), (4A); drafting.

13 Reduction in amount of relief [j4205rm]

- (1) This section applies if the shares are acquired because of the employee's employment by the employing company in relation to both the qualifying business and a business (or part of a business) that is not within section 8(3).

Origin: FA 2003 Sch.23 paras.8(4), 21(10), 22C(9).

- (2) The amount of relief is reduced by a just and reasonable amount.

Origin: FA 2003 Sch.23 paras.8(4), 21(10), 22C(9).

Giving of relief

14 How the relief is given [j4206rm]

- (1) The relief is given for the accounting period in which the shares are acquired.

Origin: FA 2003 Sch.23 paras.10(1), 22(2), 22D(2).

- (2) The relief is given by deducting the amount of relief in calculating the profits of the qualifying business for corporation tax purposes (subject to subsections (3) and (4)).

Origin: FA 2003 Sch.23 para.9(1).

- (3) If the employing company is a company with investment business (as defined in section [Meaning of “company with investment business” and “investment business”]), the amount of relief is treated as an expense of management of the company.

But this subsection does not apply if the qualifying business is a property business (and subsection (2) applies instead).

Origin: FA 2003 Sch.23 paras.9(2), 30; drafting.

- (4) [If the employing company is a company in relation to which section 76 of ICTA (expenses of insurance companies) applies, the amount of relief is treated as an expense payable falling to be brought into account at Step 1 in subsection (7) of that section.]

Origin: FA 2003 Sch.23 paras.9(3), 30.

- (5) Apportion the relief on a just and reasonable basis if the shares are acquired because of the employee's employment by the employing company in relation to more than one business (or part of a business) within section 8(3).

Origin: FA 2003 Sch.23 para.9(4).

CHAPTER 3

RELIEF IF EMPLOYEE OR OTHER PERSON OBTAINS OPTION TO ACQUIRE SHARES

Overview

15 Overview of Chapter 3 [j4207Arm]

- (1) This Chapter provides for relief if –

- (a) an employee or another person obtains an option to acquire shares because of the employee's employment by a company, and
- (b) shares are acquired pursuant to the option.

Origin: Drafting.

- (2) Sections 16 to 18 set out the requirements that must be met for relief to be available.

Origin: Drafting.

- (3) Sections 19 to 21 set out how the amount of relief is calculated.

Origin: Drafting.

- (4) Section 22 sets out how the relief is given.

Origin: Drafting.

- (5) Sections 23 and 24 deal with cases where a person obtains an option to acquire shares in a company and that company is subsequently taken over.

Origin: Drafting.

- (6) Section 25 provides for relief to be given to a successor company if the qualifying business is transferred by group transfers.

Origin: Drafting.

Requirements to be met for relief to be available

16 Basic requirements for relief under Chapter 3 [j4207rm]

- (1) Relief under this Chapter is available to a company ("the employing company") if—
 - (a) a person ("the employee") is employed by the employing company,
 - (b) the employee or another person obtains an option to acquire shares as mentioned in subsection (2),
 - (c) the person who obtains the option acquires shares pursuant to the option, and
 - (d) the conditions set out in sections 17 and 18 are met as mentioned in those sections.

The person who obtains the option is referred to in that capacity as "the recipient".

Origin: FA 2003 Sch.23 paras.1(1), (3), 2, 21(2), 22C(2), 27(2); drafting.

- (2) The option must have been obtained because of the employee's employment by the employing company in relation to a business (or part of a business) within subsection (3).

The employee's employment is referred to as "the relevant employment" and the business (or part) within subsection (3) is referred to as "the qualifying business".

Origin: FA 2003 Sch.23 paras.1(1), (3), 2; drafting.

- (3) A business is within this subsection so far as—
 - (a) the business is carried on by the employing company, and

- (b) the employing company is within the charge to corporation tax in relation to the profits of the business.

Origin: FA 2003 Sch.23 para.3.

- (4) If –
- (a) the recipient dies, and
 - (b) subsequently another person acquires shares pursuant to the option, this Chapter applies as if the recipient were alive and the shares were acquired by the recipient.

Origin: FA 2003 Sch.23 para.27(2).

17 Conditions to be met in relation to the shares [j4208rm]

- (1) The following conditions must be met in relation to the shares acquired.

Condition 1

The shares are ordinary shares that are fully paid-up and not redeemable.

Condition 2

The shares are –

- (a) shares of a class listed on a recognised stock exchange,
- (b) shares in a company that is not under the control of another company, or
- (c) shares in a company that is under the control of another company (other than an excluded company) whose shares are listed on a recognised stock exchange.

A company is excluded if it is a close company or would be a close company if it were UK resident.

Condition 3

The shares are shares in –

- (a) the employing company,
- (b) a company that, when the option is obtained, is a parent company of the employing company,
- (c) a company that, when the option is obtained, is a member of a consortium that owns the employing company or a parent company within paragraph (b),
- (d) a company within subsection (2), or
- (e) a qualifying successor company (see section 23).

Origin: FA 2003 Sch.23 paras.4, 12.

- (2) A company (“company A”) is within this subsection if when the option is obtained –
- (a) the employing company or a parent company within paragraph (b) of condition 3 is a member of a consortium that owns another company (“company B”), and
 - (b) company A is –
 - (i) a member of that consortium or a parent company of a member of that consortium, and

- (ii) a member of the same commercial association of companies as company B.

Origin: FA 2003 Sch.23 para.12.

18 Condition to be met in relation to employee's income tax position [j4209rm]

- (1) The following condition must be met in relation to the income tax position of the employee.

The Condition

The acquisition of the shares is a chargeable event in relation to the employee for the purposes of section 476 of ITEPA 2003 (whether or not an amount counts as employment income of the employee because of that event).

Origin: FA 2003 Sch.23 para.14(1).

- (2) Subsection (3) applies if the condition –
 - (a) is not met, but
 - (b) would be met if at all material times the employee had met the UK conditions in relation to the relevant employment.

Origin: FA 2003 Sch.23 paras.14(1), (2), 21(11), 22C(10).

- (3) This Chapter applies as if the employee had met the UK conditions as mentioned in subsection (2)(b).

Origin: FA 2003 Sch.23 paras.14(1), (2), 21(11), 22C(10).

- (4) If the employee is dead when the shares are acquired, treat the condition as met if it would have been met had the employee been alive.

Origin: FA 2003 Sch.23 para.27(1).

Calculation of amount of relief

19 Calculation of amount of relief if shares are neither restricted nor convertible [j4210Arm]

- (1) If the shares acquired are neither restricted shares nor convertible shares, the amount of relief to be given is an amount equal to –
 - (a) the market value of the shares when they are acquired, less
 - (b) the total amount or value of any consideration given by any person in relation to the obtaining of the option or to the acquisition of the shares.

This is subject to section 21.

Origin: FA 2003 Sch.23 para.15(1).

- (2) The consideration mentioned in subsection (1)(b) does not include –
 - (a) the performance of any duties of, or in connection with, the relevant employment, and
 - (b) an amount paid or payable by the employee because of –
 - (i) an agreement within paragraph 3A(2) of Schedule 1 to the Social Security Contributions and Benefits Act 1992 (c. 4) or of Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7), or

(ii) an election under paragraph 3B of either of those Schedules.

Origin: FA 2003 Sch.23 paras.15(2), 30.

- (3) A just and reasonable apportionment is made if any consideration is given partly in relation to the obtaining of the option or to the acquisition of the shares and partly in relation to other matters.

Origin: FA 2003 Sch.23 para.15(3).

20 Calculation of amount of relief if shares are restricted or convertible [j4210Brm]

- (1) If the shares acquired are restricted shares or convertible shares (or both), the amount of relief to be given is calculated as follows.

This is subject to section 21.

Origin: Drafting.

- (2) The amount of relief is equal to –
- (a) the amount that counts as employment income of the employee under section 476 of ITEPA 2003 in relation to the acquisition of the shares, or
 - (b) if the option is a qualifying option (within the meaning of the EMI code), the amount that would have so counted apart from the EMI code.

For this purpose ignore any relief under section 481 or 482 of ITEPA 2003 and “the EMI code” is defined in section 527(3) of that Act.

Origin: FA 2003 Sch.23 paras.21(4), (4A), 22C(4), (4ZA), 30.

- (3) If the shares are convertible shares, for the purposes of subsection (2) calculate their market value as if they were not convertible shares.

Origin: FA 2003 Sch.23 paras.21(4), 22C(4), (4A); drafting.

- (4) If the employee is dead when the shares are acquired, calculate the amount of relief as if the employee were alive.

Origin: FA 2003 Sch.23 para.27(1); drafting.

21 Reduction in amount of relief [j4210rm]

- (1) This section applies if the option is obtained because of the employee’s employment by the employing company in relation to both the qualifying business and a business (or part of a business) that is not within section 16(3).

Origin: FA 2003 Sch.23 paras.15(4), 21(10), 22C(9).

- (2) The amount of relief is reduced by a just and reasonable amount.

Origin: FA 2003 Sch.23 paras.15(4), 21(10), 22C(9).

Giving of relief

22 How the relief is given [j4211rm]

- (1) The relief is given for the accounting period in which the shares are acquired.

Origin: FA 2003 Sch.23 paras.17(1), 22(3), 22D(3).

- (2) The relief is given by deducting the amount of relief in calculating the profits of the qualifying business for corporation tax purposes (subject to subsections (3) and (4)).

Origin: FA 2003 Sch.23 para.16(1); drafting.

- (3) If the employing company is a company with investment business (as defined in section [Meaning of “company with investment business” and “investment business”]), the amount of relief is treated as an expense of management of the company.

But this subsection does not apply if the qualifying business is a property business (and subsection (2) applies instead).

Origin: FA 2003 Sch.23 paras.16(2), 30; drafting.

- (4) [If the employing company is a company in relation to which section 76 of ICTA (expenses of insurance companies) applies, the amount of relief is treated as an expense payable falling to be brought into account at Step 1 in subsection (7) of that section.]

Origin: FA 2003 Sch.23 paras.16(3), 30.

- (5) Apportion the relief on a just and reasonable basis if the option is obtained because of the employee’s employment by the employing company in relation to more than one business (or part of a business) within section 16(3).

Origin: FA 2003 Sch.23 para.16(4).

Takeovers and transfers of businesses

23 Takeover of company whose shares are subject to option [j4212rm]

- (1) This section applies if –
- (a) a person (“P”) obtains a qualifying option to acquire shares in a company,
 - (b) subsequently there is a takeover of that company,
 - (c) P, by agreement with the acquiring company, releases P’s rights under the qualifying option in consideration of P’s obtaining another option (“the new option”), and
 - (d) the new option is an option to acquire shares in a qualifying company.
- Section 24 explains what is meant by “qualifying option”, “takeover”, “the acquiring company” and “qualifying company”.

Origin: FA 2003 Sch.23 para.13(1); drafting.

- (2) This Chapter applies as if shares acquired pursuant to the new option were acquired pursuant to the qualifying option.

Origin: FA 2003 Sch.23 para.13(2).

- (3) The company whose shares are subject to the new option is a qualifying successor company for the purposes of paragraph (e) of condition 3 in section 17.

Origin: FA 2003 Sch.23 para.13(2).

- (4) In calculating the amount of any relief resulting from this section –
- (a) treat any consideration given in relation to the obtaining of the new option as consideration given in relation to the obtaining of the qualifying option, and
 - (b) treat any consideration given in relation to the acquisition of shares pursuant to the new option as consideration given in relation to the acquisition of shares pursuant to the qualifying option.

The consideration covered by paragraph (a) does not include the consideration mentioned in subsection (1)(c).

Origin: FA 2003 Sch.23 para.13(2); drafting.

24 Supplementary provision for the purposes of section 23 [j4213rm]

- (1) This section applies for the purposes of section 23.
- Origin: Drafting.
- (2) There is a takeover of a company when another company (“the acquiring company”) acquires control of it.

Origin: FA 2003 Sch.23 para.13(3).

- (3) An option is a qualifying option if condition 3 in section 17 would be met in relation to shares acquired pursuant to the option.

Origin: FA 2003 Sch.23 para.13(3).

- (4) The following companies are qualifying companies –
- (a) the acquiring company,
 - (b) a company that, when the takeover occurs, is a parent company of the acquiring company,
 - (c) a company that, when the takeover occurs, is a member of a consortium that owns the acquiring company or a parent company within paragraph (b), and
 - (d) a company within subsection (5).

Origin: FA 2003 Sch.23 para.13(4).

- (5) A company (“company A”) is within this subsection if when the takeover occurs –
- (a) the acquiring company or a parent company within subsection (4)(b) is a member of a consortium that owns another company (“company B”), and
 - (b) company A is –
 - (i) a member of that consortium or a parent company of a member of that consortium, and
 - (ii) a member of the same commercial association of companies as company B.

Origin: FA 2003 Sch.23 para.13(4).

25 Transfer of qualifying business by group transfers [j4213Arm]

- (1) This section applies in relation to relief to be given under this Chapter if –

- (a) during the option period, the whole, or substantially the whole, of the qualifying business is transferred, and
- (b) conditions A and B are met.

Origin: FA 2003 Sch.23 para.23(1).

- (2) Condition A is that—
- (a) the transfer is a group transfer, or
 - (b) if there is more than one transfer, all the transfers are group transfers.

Origin: FA 2003 Sch.23 para.23(1).

- (3) Condition B is that, as a result of the transfer or transfers, at the end of the option period—
- (a) the whole, or substantially the whole, of the qualifying business is carried on by one company (“the successor company”) only and that company is not the employing company, or
 - (b) the whole, or substantially the whole, of the qualifying business is carried on by companies (“the successor companies”) none of which is the employing company.

Origin: FA 2003 Sch.23 para.23(1).

- (4) The relief is to be given to—
- (a) the successor company, or
 - (b) whichever one of the successor companies is nominated by them,
- instead of the employing company (and references to the employing company in section 22(3) and (4) are to be read as references to the company to which the relief is to be given).

Origin: FA 2003 Sch.23 para.23(3).

- (5) “The option period” means the period—
- (a) beginning when the option is obtained, and
 - (b) ending when the shares are acquired.

Origin: FA 2003 Sch.23 para.23(1), (2).

CHAPTER 4

ADDITIONAL RELIEF IN CASES INVOLVING RESTRICTED SHARES

26 Additional relief available if shares acquired are restricted shares [j4216rm]

- (1) This Chapter applies if—
- (a) relief (“the original relief”) is available under Chapter 2 or 3 in relation to an acquisition of restricted shares, and
 - (b) after the acquisition—
 - (i) an event that is a chargeable event in relation to the restricted shares for the purposes of section 426 of ITEPA 2003 occurs, or
 - (ii) Chapter 2 of Part 7 of ITEPA 2003 ceases to apply to the restricted shares because the employee dies (see section 421B(4) and (6) of that Act).

(For the purposes of paragraph (a) it does not matter if the amount of relief given is nil.)

Origin: FA 2003 Sch.23 para.21(1), (2), (7); drafting.

- (2) Relief under this Chapter is available to the employing company.

Origin: FA 2003 Sch.23 para.21(1), (2).

- (3) Subsection (4) applies if section 426 of ITEPA 2003 –
- (a) does not apply in relation to the restricted shares, but
 - (b) would apply if at all material times the employee had met the UK conditions in relation to the relevant employment.

Origin: FA 2003 Sch.23 para.21(11).

- (4) This Chapter applies as if the employee had met the UK conditions as mentioned in subsection (3)(b).

Origin: FA 2003 Sch.23 para.21(11).

- (5) If –
- (a) the original relief is available as a result of section 16(4), and
 - (b) the recipient is not the employee,
- this Chapter applies as if the recipient were alive and the restricted shares were acquired by the recipient.

Origin: FA 2003 Sch.23 para.27(2); drafting.

- (6) If the original relief is available as a result of section 23, this Chapter applies as if the restricted shares were acquired pursuant to the qualifying option mentioned in that section.

Origin: FA 2003 Sch.23 para.13.

- (7) To find out what accounting period the relief is given for and how to calculate the amount of relief, go to –
- (a) section 27 for relief available as a result of the occurrence of a chargeable event, and
 - (b) section 28 for relief available as a result of the employee's death.
- Those sections are supplemented by section 29.

Origin: Drafting.

- (8) Section 30 provides for the relief to be given to a successor company if the qualifying business is transferred by group transfers.

Origin: Drafting.

27 Relief available on occurrence of chargeable event [j4218rm]

- (1) This section applies in relation to relief available as a result of the occurrence of a chargeable event.

Origin: Drafting.

- (2) The relief is given for the accounting period in which the chargeable event occurs.

Origin: FA 2003 Sch.23 para.22(5).

- (3) The amount of relief is equal to the amount that counts as employment income of the employee under section 426 of ITEPA 2003 in relation to the chargeable event.

Origin: FA 2003 Sch.23 para.21(6).

- (4) Ignore the following for the purposes of subsection (3) –
- (a) any relief under section 428A of ITEPA 2003,
 - (b) section 446E(6) of ITEPA 2003, and
 - (c) the amount of any non-commercial increase (as defined in section 446K(4) of ITEPA 2003) in the market value of the restricted shares after their acquisition.

Origin: FA 2003 Sch.23 para.21(6), (8), (9).

28 Relief available on death of employee [j4218Arm]

- (1) This section applies in relation to relief available as a result of the employee's death.

Origin: Drafting.

- (2) The relief is given for the accounting period in which the employee dies.

Origin: FA 2003 Sch.23 para.22(6).

- (3) The amount of relief is equal to the amount that would have counted as employment income of the employee under section 426 of ITEPA 2003 had a chargeable event within section 427(3)(c) of that Act occurred immediately before Chapter 2 of Part 7 of that Act ceased to apply to the restricted shares because of the employee's death.

Origin: FA 2003 Sch.23 para.21(7).

- (4) For the purposes of subsection (3) –
- (a) treat the amount of expenses resulting from section 428(6) of ITEPA 2003 as nil, and
 - (b) ignore the following –
 - (i) sections 428(9) and 446E(6) of ITEPA 2003, and
 - (ii) the amount of any non-commercial increase (as defined in section 446K(4) of ITEPA 2003) in the market value of the restricted shares after their acquisition.

Origin: FA 2003 Sch.23 para.21(7), (8), (9).

29 Supplementary provision for the purposes of sections 27 and 28 [j4219rm]

- (1) If section 13 or 21 applies in relation to the original relief, that section applies in relation to the relief under this Chapter as it applies in relation to the original relief.

Origin: FA 2003 Sch.23 para.21(10).

- (2) For the purposes of the giving of the relief under this Chapter –
- (a) if the original relief is available under Chapter 2, apply section 14(2) to (5), and

- (b) if the original relief is available under Chapter 3, apply section 22(2) to (5).

Origin: FA 2003 Sch.23 paras.9, 16.

30 Transfer of qualifying business by group transfers [j4219Arm]

- (1) This section applies in relation to relief to be given under this Chapter if –
- (a) during the interim period, the whole, or substantially the whole, of the qualifying business is transferred, and
 - (b) conditions A and B are met.

Origin: FA 2003 Sch.23 para.23(1).

- (2) Condition A is that –
- (a) the transfer is a group transfer, or
 - (b) if there is more than one transfer, all the transfers are group transfers.

Origin: FA 2003 Sch.23 para.23(1).

- (3) Condition B is that, as a result of the transfer or transfers, at the end of the interim period –
- (a) the whole, or substantially the whole, of the qualifying business is carried on by one company (“the successor company”) only and that company is not the employing company, or
 - (b) the whole, or substantially the whole, of the qualifying business is carried on by companies (“the successor companies”) none of which is the employing company.

Origin: FA 2003 Sch.23 para.23(1).

- (4) The relief is to be given to –
- (a) the successor company, or
 - (b) whichever one of the successor companies is nominated by them,
- instead of the employing company (and references to the employing company in section 14(3) and (4) or 22(3) and (4) (as applied by section 29(2)) are to be read as references to the company to which the relief is to be given).

Origin: FA 2003 Sch.23 para.23(3).

- (5) “The interim period” is to be read in accordance with subsections (6) and (7).

Origin: Drafting.

- (6) The interim period begins –
- (a) if the original relief is available under Chapter 2, when the restricted shares are acquired, and
 - (b) if the original relief is available under Chapter 3, when the option is obtained.

Origin: FA 2003 Sch.23 para.23(1).

- (7) The interim period ends –
- (a) if the relief under this Chapter is available as a result of the occurrence of a chargeable event, when the chargeable event occurs, and
 - (b) if the relief under this Chapter is available as a result of the employee’s death, when the employee dies.

Origin: FA 2003 Sch.23 para.23(2).

CHAPTER 5

ADDITIONAL RELIEF IN CASES INVOLVING CONVERTIBLE SECURITIES

31 Additional relief available if shares acquired are convertible shares etc [\[j4221rm\]](#)

- (1) This Chapter applies if –
- (a) relief under Chapter 2 or 3 is available in relation to an acquisition of convertible shares, or
 - (b) relief under Chapter 2 or 3 would have been available in relation to an acquisition of convertible securities but for the fact that the securities were not shares in relation to which all the conditions set out in section 9 or 17 were met.

In this Chapter “the acquired securities” means the convertible shares mentioned in paragraph (a) or the convertible securities mentioned in paragraph (b) and “the original relief” means the relief mentioned in paragraph (a) or (b).

(For the purposes of paragraph (a) it does not matter if the amount of relief given is nil.)

Origin: FA 2003 Sch.23 paras.22B(2), 22C(1); drafting.

- (2) Relief under this Chapter is available to the employing company if, after the acquisition, a chargeable event (see section 32) occurs in relation to the acquired securities.

Origin: FA 2003 Sch.23 para.22C(1), (2).

- (3) Relief under this Chapter is also available to the employing company if –
- (a) the employee is dead when the acquisition occurs or dies after the acquisition, and
 - (b) the condition mentioned in subsection (4) is met.

Origin: FA 2003 Sch.23 para.22C(1), (2); drafting.

- (4) The condition referred to in subsection (3)(b) is met on the occurrence of the first event (“the trigger event”) occurring after the employee’s death that would have been a chargeable event in relation to the acquired securities had the employee been alive.

Origin: FA 2003 Sch.23 paras.22C(7), 22D(6).

- (5) If the original relief is or would have been available as a result of section 16(4), this Chapter applies as if the recipient were alive and the acquired securities were acquired by the recipient.

Origin: FA 2003 Sch.23 para.27(2).

- (6) If the original relief is or would have been available as a result of section 23, this Chapter applies as if the acquired securities were acquired pursuant to the qualifying option mentioned in that section.

Origin: FA 2003 Sch.23 para.13.

- (7) To find out what accounting period the relief is given for and how to calculate the amount of relief, go to—
- (a) section 33 for relief available as a result of the occurrence of a chargeable event, and
 - (b) section 34 for relief available as a result of the employee’s death.
- Those sections are supplemented by section 35.

Origin: Drafting.

- (8) Section 36 provides for the relief to be given to a successor company if the qualifying business is transferred by group transfers.

Origin: Drafting.

- (9) “Convertible securities” includes an interest in convertible securities.

Origin: FA 2003 Sch.23 para.22B(2).

32 Meaning of “chargeable event” [j4221Arm]

- (1) In this Chapter “chargeable event” means an event that—
- (a) is a chargeable event for the purposes of section 438 of ITEPA 2003,
 - (b) is within section 439(3)(a) of ITEPA 2003, and
 - (c) is within subsection (2).
- Origin: FA 2003 Sch.23 para.22C(11).*
- (2) An event is within this subsection if it is the conversion of convertible securities into shares in relation to which—
- (a) if the original relief is or would have been available under Chapter 2, all the conditions set out in section 9 are met, or
 - (b) if the original relief is or would have been available under Chapter 3, all the conditions set out in section 17 are met (ignoring paragraph (e) of condition 3).

Origin: FA 2003 Sch.23 para.22C(11).

- (3) Subsection (4) applies if section 438 of ITEPA 2003—
- (a) does not apply in relation to the acquired securities, but
 - (b) would apply if at all material times the employee had met the UK conditions in relation to the relevant employment.

Origin: FA 2003 Sch.23 para.22C(10).

- (4) This Chapter applies as if the employee had met the UK conditions as mentioned in subsection (3)(b).

Origin: FA 2003 Sch.23 para.22C(10).

33 Relief available on occurrence of chargeable event [j4223rm]

- (1) This section applies in relation to relief available as a result of the occurrence of a chargeable event.

Origin: Drafting.

- (2) The relief is given for the accounting period in which the chargeable event occurs.

Origin: FA 2003 Sch.23 para.22D(5).

- (3) The amount of relief is equal to the amount that counts as employment income of the employee under section 438 of ITEPA 2003 in relation to the chargeable event.

Origin: FA 2003 Sch.23 para.22C(6).

- (4) For the purposes of subsection (3) ignore –
- (a) any relief under section 442A of ITEPA 2003, and
 - (b) sections 446G and 446H of ITEPA 2003.

Origin: FA 2003 Sch.23 para.22C(6), (8).

34 Relief available following death of employee [j4223Arm]

- (1) This section applies in relation to relief available as a result of the employee's death.

Origin: Drafting.

- (2) The relief is given for the accounting period in which the trigger event occurs.

Origin: FA 2003 Sch.23 para.22D(6).

- (3) The amount of relief is equal to the amount that would have counted as employment income of the employee under section 438 of ITEPA 2003 in relation to the trigger event had the employee been alive.

Origin: FA 2003 Sch.23 para.22C(7).

- (4) For the purposes of subsection (3) ignore sections 446G and 446H of ITEPA 2003.

Origin: FA 2003 Sch.23 para.22C(8).

35 Supplementary provision for the purposes of sections 33 and 34 [j4224rm]

- (1) If section 13 or 21 applies or would have applied in relation to the original relief, that section applies in relation to the relief under this Chapter as it applies or would have applied in relation to the original relief.

Origin: FA 2003 Sch.23 para.22C(9).

- (2) For the purposes of the giving of the relief under this Chapter –
- (a) if the original relief is or would have been available under Chapter 2, apply section 14(2) to (5), and
 - (b) if the original relief is or would have been available under Chapter 3, apply section 22(2) to (5).

Origin: FA 2003 Sch.23 paras.9, 16.

36 Transfer of qualifying business by group transfers [j4225rm]

- (1) This section applies in relation to relief to be given under this Chapter if –
- (a) during the interim period, the whole, or substantially the whole, of the qualifying business is transferred, and
 - (b) conditions A and B are met.

Origin: FA 2003 Sch.23 para.23(1).

- (2) Condition A is that—
- (a) the transfer is a group transfer, or
 - (b) if there is more than one transfer, all the transfers are group transfers.

Origin: FA 2003 Sch.23 para.23(1).

- (3) Condition B is that, as a result of the transfer or transfers, at the end of the interim period—
- (a) the whole, or substantially the whole, of the qualifying business is carried on by one company (“the successor company”) only and that company is not the employing company, or
 - (b) the whole, or substantially the whole, of the qualifying business is carried on by companies (“the successor companies”) none of which is the employing company.

Origin: FA 2003 Sch.23 para.23(1).

- (4) The relief is to be given to—
- (a) the successor company, or
 - (b) whichever one of the successor companies is nominated by them,
- instead of the employing company (and references to the employing company in section 14(3) and (4) or 22(3) and (4) (as applied by section 35(2)) are to be read as references to the company to which the relief is to be given).

Origin: FA 2003 Sch.23 para.23(3).

- (5) “The interim period” is to be read in accordance with subsections (6) and (7).

Origin: Drafting.

- (6) The interim period begins—
- (a) if the original relief is or would have been available under Chapter 2, when the acquired securities are acquired, and
 - (b) if the original relief is or would have been available under Chapter 3, when the option is obtained.

Origin: FA 2003 Sch.23 para.23(1).

- (7) The interim period ends—
- (a) if the relief under this Chapter is available as a result of the occurrence of a chargeable event, when the chargeable event occurs, and
 - (b) if the relief under this Chapter is available as a result of the employee’s death, when the trigger event occurs.

Origin: FA 2003 Sch.23 para.23(2).

CHAPTER 6

RELATIONSHIP BETWEEN RELIEF UNDER PART AND OTHER DEDUCTIONS

37 Priority of deductions under SIP code [j4226rm]

- (1) Deductions available under [paragraph 2, 3, 9 or 10(3) of Schedule 4AA to ICTA] are given priority over relief under this Part.

Origin: FA 2003 Sch.23 para.24(1).

- (2) Therefore no relief is available under this Part in relation to shares in respect of which a deduction is allowed under any of those [paragraphs].

Origin: FA 2003 Sch.23 para.24(2).

38 Exclusion of other deductions [j4227rm]

- (1) If relief under this Part is or, apart from condition 2 in section 10(1), would be available for an accounting period, no other deduction in relation to expenses within subsection (2) is allowed for the purpose of calculating any company's profits for corporation tax purposes for any accounting period.

Origin: FA 2003 Sch.23 para.25(1).

- (2) The expenses within this subsection are the expenses directly related to the provision of the shares.

Origin: FA 2003 Sch.23 para.25(2).

- (3) They include, in a case where the shares are acquired under an employee share scheme, any amount paid or payable by the employing company in relation to the participation of the employee in the scheme.

Origin: FA 2003 Sch.23 para.25(2).

- (4) But they do not include in such a case—
- (a) expenses incurred in setting up the scheme,
 - (b) expenses incurred in meeting, or contributing to, the costs of administering the scheme,
 - (c) the costs of borrowing for the purposes of the scheme, or
 - (d) fees, commission, stamp duty and similar incidental expenses of acquiring the shares.

Origin: FA 2003 Sch.23 para.25(3).

- (5) "Employee share scheme" means a scheme or arrangement for enabling shares to be acquired because of persons' employment.

Origin: FA 2003 Sch.23 para.25(4).

SCHEDULES

SCHEDULE 1

Section [ref]

CONSEQUENTIAL AMENDMENTS (SCHEDULE 23 TO FA 2003) [JEMPLOYEEESHAREACQUISITIONSCONSEQUENTIALS]

PART 1

OTHER ENACTMENTS

Income Tax (Earnings and Pensions) Act 2003 (c. 1)

- 1 The Income Tax (Earnings and Pensions) Act 2003 is amended as follows.
- 2 In section 702(5B) (which sets out what shares are corporation tax deductible) for “Schedule 23 to the Finance Act 2003” substitute “Part [1] of [Bill 5]”.

Finance Act 2003 (c. 14)

- 3 The Finance Act 2003 is amended as follows.
- 4 Omit section 141 (which introduces Schedule 23).
- 5 Omit Schedule 23 (corporation tax relief for employee share acquisitions).

SCHEDULE 2

Section [ref]

TRANSITIONAL PROVISIONS (SCHEDULE 23 TO FA 2003) [JEMPLOYEEESHAREACQUISITIONSTRANSITIONALS]

PART 1

OTHER RELIEF FOR EMPLOYEE SHARE ACQUISITIONS

Accounting periods beginning before 1 January 2003

- 1 (1) Relief under Part [1] of this Act is not available in relation to shares acquired so far as a deduction is available or has been made in relation to relevant expenses in calculating the chargeable profits of the employing company or any other company for the purposes of corporation tax for an accounting period beginning before 1 January 2003.

Origin: FA 2003 Sch.23 para.33(1).

- (2) “Relevant expenses” means any expenses referable, directly or indirectly, to the provision of the shares acquired.

Origin: FA 2003 Sch.23 para.33(2).

Restricted shares not to include shares issued before 16 April 2003

- 2 In Part [1] of this Act “restricted shares” does not include shares acquired before 16 April 2003.

Origin: FA 2003 Sch.22 para.68(2).

Shares acquired before 16 April 2003 that are subject to forfeiture

- 3 (1) Relief under Part [1] of this Act is not available in relation to shares acquired before 16 April 2003 that are subject to forfeiture.

Origin: FA 2003 Sch.22 para.68(2).

- (2) “Subject to forfeiture” is to be read in accordance with paragraph 19 of Schedule 23 to FA 2003 as originally enacted.

Origin: FA 2003 Sch.22 para.68(2).

- (3) Accordingly, Schedule 23 to FA 2003 continues to apply in relation to such shares as it applies in relation to them immediately before the commencement of Part [1] of this Act.

Origin: FA 2003 Sch.22 para.68(2).

Meaning of “employment” for times before 16 April 2003

- 4 In relation to times before 16 April 2003, Part [1] of this Act applies as if section 2(2) were omitted.

Origin: FA 2003 Sch.22 para.71(2).

Relief under Chapters 4 and 5 of Part [1]

- 5 (1) This paragraph applies for the purposes of Chapters 4 and 5 of Part [1] of this Act in their application in relation to shares or other securities acquired during an accounting period that ends on or before 31 March 2009.

Origin: Drafting.

- (2) In accordance with Part 1 of this Schedule (continuity of law), references to relief under Chapter 2 or 3 of Part [1] of this Act are to be read as references to relief under Schedule 23 to FA 2003 (as that Schedule applied when the shares or other securities were acquired) available on the acquisition.

Origin: Drafting.

SCHEDULE 3

Section {j999998}

REPEALS AND REVOCATIONS [JEMPLOYEESHAREACQUISITIONSREPEALS]

REPEALS (SCHEDULE 23 TO FA 2003)

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Finance Act 2003 (c. 14)	Section 141. In Schedule 22, paragraphs 59 to 73. Schedule 23.
Finance Act 2004 (c. 12)	In Schedule 16, paragraph 5.
Finance (No.2) Act 2005	In Schedule 2, paragraph 20.
Finance Act 2006 (c. 25)	Section 93.

SCHEDULE 4

Section {j999991}

ABBREVIATIONS AND DEFINED EXPRESSIONS [JEMPLOYEESHAREACQUISITIONSINDEX]

PART 1

INDEX OF EXPRESSIONS DEFINED IN THIS ACT ETC. (EMPLOYEE SHARE ACQUISITIONS)

the acquired securities (in Chapter [5] Part [1])	section 31(1)
chargeable event (in Chapter [5] of Part [1])	section 32
commerical association of companies (in Part [1])	section 5(9)
consortium (in relation to companies that are owned by a consortium or are members of a consortium) (in Part [1])	section 5(5) to (8)
control (in Part [1])	section 6
convertible securities (in Part [1])	section 6
convertible shares (in Part [1])	section 6
the employee (in Part [1])	section 6
the employing company (in Part [1])	section 6
employment (in Part [1])	section 2
group (in relation to companies that are members of the same group of companies) (in Part [1])	section 5(2)
group transfer (in Part [1])	section 5(3)

market value (in Part [1])	section 6
option (in Part [1])	section 6
ordinary shares (in Part [1])	section 6
the original relief (in Chapter [4] of Part [1])	section 26(1)(a)
the original relief (in Chapter [5] of Part [1])	section 31(1)
parent company (in Part [1])	section 5(4)
the qualifying business (in Part [1])	section 6
the recipient (in Part [1])	section 6
the relevant employment (in Part [1])	section 6
restricted shares (in Part [1])	section 6
shares (in Part [1])	section 3
the trigger event (in Chapter 5 of Part [1])	section 31(4)
the UK conditions (in Part [1])	section 4