

Mr Paul Boateng

(Brent South - Lab)

**NEW CLAUSE [] : APPROVED PLANS AND
SCHEMES**

To move the following Clause-

‘(1) The Income Tax (Earnings and Pensions) Act 2003 (c. 1) is amended as follows.

(2) Omit section 421G (exclusion from Chapters 2 to 4 of Part 7 of shares awarded or acquired under approved plan or scheme).

(3) In Chapter 2 of Part 7 (restricted securities), after section 431 insert—

“431A Shares under approved plan or scheme

(1) Where employment-related securities are restricted securities or a restricted interest in securities, the employer and the employee are to be treated as making an election under section 431(1) in relation to the employment-related securities if they are shares, or an interest in shares, to which this subsection applies.

(2) Subsection (1) applies to—

(a) shares awarded or acquired under an approved share incentive plan (within the meaning of Chapter 6 of this Part) in circumstances in which (in accordance with section 490) no liability to income tax arises,

(b) shares acquired by the exercise of a share option granted under an approved SAYE option scheme (within the meaning of Chapter 7 of this Part) in circumstances in which (in accordance with section 519) no liability to income tax arises,

(c) shares acquired by the exercise of a share option granted under an approved CSOP scheme (within the meaning of Chapter 8 of this Part) in circumstances in which (in accordance with section 524) no liability to income tax arises, and

(d) shares acquired by the exercise of a qualifying option within the meaning of section 527(4) (enterprise management incentives) in circumstances in which (in accordance with section 530) no liability to income tax arises.”

(4) In section 489 (operation of tax advantages in connection with approved share incentive plans), after subsection (3) insert—

“(4) And those sections do not apply if the main purpose (or one of the main purposes) of the arrangements under which the shares in question are awarded or acquired is the avoidance of tax or national insurance contributions.”

(5) In sections 505 and 506 (charge on shares ceasing to be subject to approved share incentive plan), after subsection (4) insert—

“(4A) Any tax due under subsection (2) or (3) is reduced by the amount or aggregate amount of any tax paid by virtue of Chapter 3B of this Part in relation to the shares.”

(6) In section 519(1) (approved SAYE option schemes: no charge in respect of exercise of option) insert at the end “and

(c) the avoidance of tax or national insurance contributions is not the main purpose (or one of the main purposes) of any arrangements under which the option was granted or is exercised.”

(7) In section 524(1) (approved CSOP schemes: no charge in respect of exercise of option) insert at the end “and

(c) the avoidance of tax or national insurance contributions is not the main purpose (or one of the main purposes) of any arrangements under which the option was granted or is exercised.”

(8) Section 701 (PAYE: meaning of “asset”) is amended as follows.

(9) In subsection (2)(c)—

(a) in sub-paragraph (ia), for the words after “employee” substitute “under a scheme approved under Schedule 4

(approved CSOP schemes) in circumstances in which Condition A or B as set out in section 524(2) or (2A) is met;”,

(b) omit sub-paragraph (ii), and

(c) in sub-paragraph (iii), after “1996” insert “where the avoidance of tax or national insurance contributions is not the main purpose (or one of the main purposes) of any arrangements under which the right was obtained or is exercised”.

(10) After subsection (3) insert—

“(3A) Paragraph (c) of subsection (2) does not apply to shares after their acquisition as mentioned in that paragraph.”

(11) This section has effect on and after 18th June 2004 and (so far as it does not relate to the award or acquisition of shares) applies in relation to shares awarded or acquired before that date as well as in relation to those awarded or acquired on or after that date.

(12) Where section 431A(1) of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (as inserted by subsection (3)) has effect (by virtue of subsection (11)) in relation to shares acquired before 18th June 2004, it applies in relation to them so as to treat an election under section 431(1) of that Act as made in relation to them on that date.

(13) For the purposes of the application of Chapter 3B of Part 7 of that Act (securities with artificially enhanced market value) by reason of subsections (2) and (11) in relation to shares acquired before 18th June 2004, section 446O of that Act (meaning of "relevant period") has effect as if they were acquired on that date.’.

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**NEW CLAUSE [] : SHARES ACQUIRED ON PUBLIC
OFFER**

To move the following Clause:—

‘(1) Section 421F of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (exclusion from Chapters 2 to 4 of Part 7 of shares acquired under terms of offer to the public) is amended as follows.

(2) In subsection (1), for “Chapters 2 to 4” substitute “Chapters 2, 3 and 3C”.

(3) After that subsection insert—

“(1A) But subsection (1) does not disapply those Chapters if the main purpose (or one of the main purposes)—

(a) of the arrangements under which the right or opportunity under which the shares were acquired, or

(b) for which the shares are held,

is the avoidance of tax or national insurance contributions.”

(4) This section has effect on and after 18th June 2004 and applies in relation to shares acquired before that date as well as in relation to those acquired on or after that date.

(5) For the purposes of the application of Chapter 3B of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (securities with artificially enhanced market value) by reason of subsections (2) and (4) in relation to shares acquired before that date, section 446O of that Act (meaning of "relevant period") has effect as if they were acquired on that date.’

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NEW CLAUSE [] : ASSOCIATED PERSONS ETC

To move the following Clause:—

‘(1) Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (employment income: securities) is amended as follows.

(2) In section 421C(2) (meaning of “relevant linked person” for purposes of Chapters 1 to 4), for “are connected or, although not connected, are” substitute “are or have been connected or (without being or having been connected) are or have been”.

(3) In section 472(2) (meaning of “relevant linked person” for purposes of Chapter 4), for “are connected or, although not connected, are” substitute “are or have been connected or (without being or having been connected) are or have been”.

(4) In section 477(3)(c) (chargeable events in relation to employment-related securities options), for the words after “benefit” substitute “in connection with the employment-related securities option (other than one within paragraph (a) or (b)).”

(5) This section has effect on and after 18th June 2004 and applies in relation to securities, interests and options that were employment-related securities or employment-related securities options on that date (as well as those acquired on or after that date).’.

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*() EMPLOYMENT-RELATED SECURITIES AND OPTIONS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	Section 421G. Section 429(5). Section 443(5). Section 446R(5). Section 449(4). In section 519(1), the word “and” at the end of paragraph (a). In section 524(1), the word “and” at the end of paragraph (a). Section 701(2)(c)(ii).
Finance Act 2003 (c. 14)	In Schedule 21, paragraph 18(4).

1. The repeals in sections 429, 443, 446R and 449 of the Income Tax (Earnings and Pensions) Act 2003 have effect in accordance with section (*Employee-controlled companies and unconnected companies*)(8).
2. The remaining repeals have effect in accordance with section (*Shares under approved plans and schemes*)(11).’.

EXPLANATORY NOTE

SUMMARY

1. New Clause [] amends Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) which deals with the taxation of employment-related securities. The changes ensure that remuneration value passed to employees through their ownership of shares after they have got them from Inland Revenue approved share schemes is subject to income tax and National Insurance contributions (NICs) in the same way as it is for any other shares. Additionally, the Clause inserts anti-avoidance tests into each of the Inland Revenue approved share schemes to protect their bona fide use and ensure that the generous tax and NIC advantages they offer cannot be abused. Consequential changes are also being made to the rules that determine the PAYE treatment of shares acquired through approved share schemes and in other limited circumstances. This is to ensure that PAYE operates correctly in relation to any post-acquisition charges that may arise as a result of the amendments made by this Clause.
2. New Clause [] makes similar changes to the rules relating to shares acquired under a public offer so that remuneration value passed to employees through their ownership of such shares is subject to income tax and NICs. The exemptions from the charging provisions in Chapters 2, 3 and 3C are retained to ensure that commercial use of restricted, convertible or partly-paid shares in public offers is not impaired. However, a test is being inserted that removes those exemptions if the acquisition of the shares is part of a scheme or arrangement to avoid tax or NICs.
3. New Clause [] ensures that the employment link between the employee and the securities or securities option acquired by reason of employment, once in place, cannot be broken – for example by the employee interposing a personal company. It also corrects an ambiguity in the wording of the subsection that charges benefits received in connection with an employment-related securities option.

DETAILS OF THE CLAUSE

NEW CLAUSE [] - APPROVED PLANS AND SCHEMES

4. Sub-clause (1) introduces amendments to the Income Tax (Earnings & Pensions) Act 2003 (ITEPA).
5. Sub-clause (2) removes section 421G from Chapter 1 of Part 7 of ITEPA. Section 421G currently excludes shares acquired under an Inland Revenue approved share scheme from the rules in Chapters 2 to 4. The changes ensure those chapters will then apply to such shares in the same way that they apply to all other employment-related shares and securities to ensure that income tax and NICs are payable when remuneration value is passed to employees, or persons associated with them, in connection with those securities. A special rule is needed to achieve this in relation to restricted employment-related securities to ensure that Chapter 2 or Part 7 continues to interact correctly with the other chapters in Part 7. That rule is introduced by sub-clause (3).
6. Sub-clause (3) inserts a new section 431A into Chapter 2
7. New section 431A(1) explains that where restricted shares are acquired in the circumstances set out in new section 431A(2) an election under section 431(1) is treated as having been made at the time the shares are acquired.
8. New section 431A(2) explains that the section applies to employment-related restricted shares acquired under any of the four tax-advantaged share plans in circumstances where no liability to income tax arises at acquisition. Deeming there to be a section 431(1) election does not affect the tax position of the employee at the time of acquisition. It simply ensures that those shares are then exempted from future charges under the restricted securities regime while ensuring that the other Chapters of Part 7 apply correctly if those shares are later manipulated for tax or NICs avoidance reasons. The introduction of a deemed election for Enterprise Management Incentives (EMI) shares will benefit those offering restricted shares under EMI options by reducing administration costs and removing the possibility of an inadvertent charge to income tax and NICs.

9. Sub-clause (4) amends section 489 by inserting an anti-avoidance test into the Share Incentive Plan (SIP) rules as section 489(4). The result is that if any attempt is made to include an Inland Revenue approved SIP in a scheme or arrangements to avoid tax or NICs then the generous tax and NICs advantages offered by sections 490 to 499 are not available. The Inland Revenue will also still be able to withdraw approval of the whole SIP.
10. Sub-clause (5) amends the SIP charging provisions in sections 505 and 506 that apply when shares are withdrawn from an approved SIP before certain time limits have been met. The changes ensure that if non-commercial things are done to artificially increase the value of SIP shares in circumstances that give rise to a charge under Chapter 3B of Part 7, then there will not be double taxation or a double charge to NICs under both section 505/506 and section 446L. The result is that the Chapter 3B charge would take precedence.
11. Sub-clause (6) amends section 519 by inserting an anti-avoidance test into the Save as You Earn (SAYE) rules at S519(1)(c). The result is that if any attempt is made to include an Inland Revenue approved SAYE scheme in a scheme or arrangements to avoid tax or NICs then the generous tax advantages offered by section 519 when the shares are acquired are not available. The Inland Revenue will also still be able to withdraw approval of the whole SAYE scheme.
12. Sub-clause (7) amends section 524 by inserting an anti-avoidance test into the Company Share Option Plan (CSOP) rules at S524(1)(c). The result is that if any attempt is made to include an Inland Revenue approved CSOP in a scheme or arrangements to avoid tax or NICs then the generous tax and NICs advantages offered by section 524 when the shares are acquired are not available. The Inland Revenue will also still be able to withdraw approval of the CSOP.
13. Sub-clause (8) makes consequential changes to section 701.
14. Sub-clause (9) amends the rules in section 701(2)(c) that exempt certain shares from being assets for the purposes of the PAYE rules. It applies to shares acquired under Inland Revenue approved share schemes and in other limited circumstances involving share options granted before 27th November 1996.

15. Sub-clause (9)(a) amends sub-paragraph (ia) of section 701(2)(c) to clarify the wording. The existing wording could be interpreted to mean that in circumstances where the condition in section 524(2A) is met in connection with the early exercise of a CSOP option, NICs is nonetheless payable. The new wording makes clear that this is not the case. Sub-clause (9)(b) removes sub-paragraph (ii) as it serves no purpose. Sub-clause (9)(c) inserts a purpose test into sub-paragraph (iii). This ensures that options granted before 27th November 1996 lose any exemption from PAYE and NICs if any arrangement under which the option was obtained or exercised is part of a scheme or arrangement to avoid tax or NICs.
16. Sub-clause (10) inserts a new subsection 3A into section 701. The new subsection ensures that shares referred to in section 701(2)(c) are deemed not to be assets only at the instant of their acquisition. PAYE and NICs will then operate properly in relation to SAYE or CSOP options. The shares revert after the instant of their acquisition to being assets so that PAYE and NICs apply in the normal way should a post-acquisition chargeable event occur later. Shares held on 18th June 2004 that were affected by section 701(2)(c) at acquisition are reclassified as assets from that date so that PAYE and NICs operate correctly in respect of future Chapters 2 to 4 charges relating to them.
17. Together the changes introduced by sub-clauses (8), (9) and (10) ensure that PAYE and NICs operate correctly in relation to the acquisition of tax-advantaged shares from Inland Revenue approved option schemes and in relation to any post-acquisition charges that may arise under Chapters 2 to 4.
18. Sub-clause (11) explains that the new rules apply to shares held on, or awarded or acquired, on or after 18th June 2004 but does not change the position regarding the operation of PAYE or NICs at the time of acquisition of shares that were awarded or acquired before that date.
19. Sub-clause (12) treats a section 431(1) election as made on 18th June 2004 in respect of restricted shares acquired before and still held on that date. This ensures that charges under Chapter 2 cannot arise when restrictions attaching to those shares are lifted or varied after that date.
20. Sub-clause (13) ensures that Chapter 3B will not tax appreciatory transactions that took place before 18th June 2004 in respect of

shares covered by these changes that were held on that date. It achieves this by treating the relevant period for the purposes of section 446O as starting on that date to prevent retrospective application of Chapter 3B.

NEW CLAUSE [] - SHARES ACQUIRED ON PUBLIC OFFER

21. Sub-clause (1) introduces the amendments to section 421F ITEPA, which excludes shares acquired as part of a public offer from the provisions in Chapters 2 to 4.
22. Sub-clause (2) replaces the reference to Chapters 2 to 4 with Chapters 2, 3 and 3C. As a consequence, employment-related shares acquired under a public offer will not be exempt from the provisions of Chapters 3A (securities with artificially reduced market value), 3B (securities with artificially enhanced market value), 3D (securities disposed of for more than market value) and 4 (post-acquisition benefits from securities).
23. Sub-clause (3) inserts a new anti-avoidance test as subsection (1A) in section 421F. This ensures that if the arrangements, under which the public offer employment-related shares are acquired, form part of a scheme or arrangement to avoid tax or NICs then the exemption from charges under Chapters 2, 3 and 3C on public offer shares do not apply.
24. Sub-clause (4) defines the commencement provisions for New Clause []. The new rules apply to shares held on, or acquired on or after, 18th June 2004.
25. Sub-clause (5) ensures that Chapter 3B will not tax appreciatory transactions that took place before 18th June 2004 in respect of shares covered by these changes that were held on that date. It achieves this by treating the relevant period for the purposes of section 446O as starting on that date to prevent retrospective application of Chapter 3B.

NEW CLAUSE [] – ASSOCIATED PERSONS ETC.

26. Sub-clause (1) introduces amendments to Part 7 of ITEPA.

27. Sub-clause (2) amends section 421C which provides the definition of “associated persons” for the purposes of Chapters 1 to 4 of Part 7, ITEPA. The meaning of “relevant linked person” in section 421C(2) is being made more robust to ensure that the employment link between the employee and the acquisition of employment-related securities cannot be broken. This ensures that the rules in Chapters 2 to 4 operate correctly, regardless of attempts to sever that link before any relevant benefit can be charged to income tax and NICs.
28. Sub-clause (3) makes an amendment to section 472, similar to that in sub-clause (2). This is the section that provides the definition of “associated persons” for the purposes of Chapter 5.
29. Sub-clause (4) amends section 477(3)(c) to correct an ambiguity in the wording of that sub-section which defines chargeable events in relation to employment-related securities options. The amendment will ensure that any benefit received by an associated person in connection with an employment-related securities option triggers a chargeable event.
30. Sub-clause (5) defines the commencement provisions for Clause []. The new rules apply to employment-related securities and employment-related securities options held on, or acquired on or after, 18th June 2004, to ensure there is no retrospection.

AMENDMENT – REPEALS

31. This amendment inserts references to repeals being made by Clauses [] into the appropriate place in Schedule 40 where all repeals are listed.

BACKGROUND NOTE

32. Part 7 of Income Tax (Earnings and Pensions) Act 2003 (ITEPA), which was amended by Finance Act 2003 to make the regime fairer, provides the income tax rules in cases where securities, interests in securities or securities options are acquired in connection with an employment.

33. The amendments made by the Finance Act 2003 are designed to ensure that all of the value received by way of remuneration, in the form of shares or other securities, is subject to income tax and, where appropriate, National Insurance contributions at the time it passes to the employee. The rules provide flexibility in respect of the timing of the charges.
34. The Inland Revenue has become aware of schemes that use shares or other securities in order to pass remuneration value to employees in a way that attempts to avoid income tax and National Insurance contributions. One scheme, through wholly artificial arrangements and transactions involving Government gilts, seeks to break the employee's employment link so that the cash bonus received by the employee purports to be outside the scope of Part 7. The second scheme seeks to exploit exemptions provided for Inland Revenue approved share schemes from the provisions in Chapters 2 to 4 of Part 7. In this scheme, share values are manipulated after the shares come out of an approved share scheme.
35. The Clauses taken together will put beyond doubt that the proper income tax and National Insurance contributions charges apply. They will ensure that the employment link, once in place, cannot be broken – for example by the employee interposing a personal company. They also prevent manipulation of approved share schemes by ensuring that any post-acquisition value routed through shares after they have enjoyed the generous income tax and NICs advantages offered by the approved scheme rules is properly charged to income tax and National Insurance. Similar changes are being made to the exemptions from post-acquisition charges in relation to shares acquired under a public offer.