[2016] UKUT 0568 (TCC)

Appeal number: UT/2015/0177

Income tax – termination of employment – receipt of cash and shares under share incentive plan - cancellation of options - whether value of options reduced taxable receipts - appeal dismissed

UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER

LARS SJUMARKEN **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondents**

TRIBUNAL: JUDGE ROGER BERNER
JUDGE SARAH FALK

Sitting in public at The Royal Courts of Justice, The Strand, London WC2A 2LL on 30 November 2016

Edward Waldegrave, instructed by Paul Hastings, for the Appellant

Oliver Conolly, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. This appeal relates to amounts received by the appellant, Mr Sjumarken, in the tax year 2005-06 pursuant to a Compromise Agreement entered into following the termination of his employment with BNP Paribas. The appellant's dispute with HMRC over the tax treatment of the amounts received resulted in an appeal by him to the First-tier Tribunal ("FTT") against a closure notice issued on 6 January 2010. In a decision released on 10 August 2015, neutral citation [2015] UKFTT 0375 (TC) (the "FTT decision"), the FTT allowed the appeal on one issue but dismissed it on another. That second issue is the subject of this appeal.

2. The time delay between the closure notice and the FTT decision is explained by the complex procedural history. The FTT decision followed a re-hearing of the case by the FTT, the earlier decision having been the subject of applications for permission to appeal and ultimately being set aside on the grounds of procedural irregularity.

Background

3. Until his contract of employment was terminated in October 2005 the appellant worked as an investment banker at BNP Paribas ("BNP"). The termination resulted in a negotiated settlement which was agreed in January 2006 and took the form of a letter from BNP setting out its proposed terms which was countersigned by the appellant (the "Compromise Agreement"). Under the terms of the Compromise Agreement the appellant received a cash termination payment of £117,450 (increased from the amount originally offered, which was £60,000), the release of shares under BNP's Share Incentive Plan ("SIP shares") and cash under BNP's Cash Incentive Plan ("CIP cash"). BNP deducted tax from the amounts paid on the basis that the SIP shares were valued at £144,632.48, and the CIP cash amounted to £56,863.27. The appellant also received a payment in lieu of notice and certain other small amounts.

4. While he was an employee the appellant had also been granted 3,000 long-dated share options (the "Options"). The Options were granted in March 2003 and had a life of 10 years. As discussed below, the Options did not survive the Compromise Agreement. The appellant estimated their value to be £130,286.

5. The appellant did not include the value of the SIP shares as income in his self assessment return on the basis that he thought they had been received free of tax under an approved scheme. The CIP cash was included but he later argued that it should also be treated as exempt. Following an enquiry HMRC issued a closure notice on the basis that both were fully taxable.

6. By the time the FTT heard the case in 2015 both parties agreed that there was no approved scheme and that both the SIP shares and the CIP cash were taxable. The two matters in dispute before the FTT were, first, the correct valuation of the SIP shares and, secondly, whether the value of the Options should be treated as reducing the amount of the appellant's taxable income from the Compromise Agreement. The FTT allowed the appeal on the first point, finding that the SIP shares should be valued

on the basis that they were subject to restrictions. There is no appeal against that part of the decision. The appeal on the second point was dismissed, and it is that aspect of the decision which is the subject of this appeal.

The Options and the Compromise Agreement

7. Limited evidence was available to the FTT about the Options. The appellant did not initially appreciate that he had lost his entitlement to them, but subsequently found that BNP treated them as forfeited. The appellant's view is that BNP used paragraph 8 of the Compromise Agreement to cancel the Options. This provides:

> "Apart from the provisions in paragraphs 6 and 7 above, you confirm and agree that you have no claim or entitlement in relation to any expenses, or in respect of any bonus scheme, or any share option or any other incentive payment or similar and that neither [BNP] nor any associated company is liable to make any payment to you in respect of any of these items."

(Paragraph 6 dealt with expense claims. Paragraph 7 covered the SIP shares and CIP cash and is discussed further below.)

8. HMRC's position was (and remains) that the appellant had no Options to give up at the time of the Compromise Agreement, because the Options had lapsed automatically on termination of his employment. HMRC considered that this was consistent with the wording of paragraph 8 and that it would be very unlikely that a major bank would not require any share options to be cancelled on termination.

9. The FTT did not make a clear finding of fact on this issue. It noted at [15(3)] an email to the appellant from a BNP representative in 2010 which referred to the Compromise Agreement and said "As per this agreement, your entitlement to stock options was forfeited upon termination of your employment". It went on to find at [47] that it was not possible to determine whether the Options had lapsed automatically on termination of the employment, and said at [48] that if they had not lapsed automatically then it was clear that they were cancelled as a result of paragraph 8 of the Compromise Agreement.

The relevant statutory provisions

10. The relevant legislation is contained in the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA"), extracts of which are set out in the Annex to this decision in the form in force for 2005-06. All statutory references are to ITEPA unless otherwise indicated.

11. The starting point is Chapter 2 of Part 2. Section 6 provides for the tax charge on employment income to apply to "general earnings" and "specific employment income". "General earnings" covers most forms of emoluments (including wages, bonuses and so on, dealt with in Chapter 1 of Part 3), benefits in kind and certain other specified items. "Specific employment income" is defined in s 7(4) and (6) and

includes in particular amounts which count as employment income by virtue of Part 6 or Part 7.

Chapter 3 of Part 6

12. Chapter 3 of Part 6 contains the charging provisions which apply to payments and benefits received in connection with termination of employment, subject to the exemption available for the first £30,000. Section 401(1) provides that Chapter 3 applies to "payments and other benefits which are received directly or indirectly in consideration or in consequence of, or otherwise in connection with … the termination of a person's employment". Both parties proceeded on the basis that the termination payment and CIP cash were taxed under these provisions, and therefore fall to be taxed as specific employment income. By virtue of s 401(3) Chapter 3 does not apply to amounts chargeable to income tax apart from that Chapter, so if another provision is relevant it will take priority. This means that amounts taxable as emoluments and therefore as general earnings (which would include the payment in lieu of notice, at least if provided for under the appellant's contract of employment), and amounts taxable under Part 7, would not fall within Chapter 3.

Chapter 5 of Part 7

13. Part 7 contains a set of provisions governing the tax treatment of securities and rights to securities obtained in connection with employment. The appellant's position was that his entitlement to the SIP shares was a "right to acquire securities" (securities being defined to include shares by s 420(1)(a)) and that he had therefore been granted a "securities option" as defined in s 420(8). Since he had been granted the option by reason of his employment it was an "employment-related securities option" to which Chapter 5 of Part 7 applied (s 471(1) and (5)).

14. Under Chapter 5 no charge arises when an option is acquired (s 475(1)) but s 476 provides for a charge to arise on the employee on a "chargeable event". For these purposes the concept of employee extends to ex-employees: see s 471(2) which provides that employment includes a former employment and s 471(5) which requires "employee" to be construed accordingly. The appellant's view was that his acquisition of the SIP shares was a "chargeable event" under s 477(3)(a) and taxable as specific employment income on that basis. As discussed further below HMRC argued that Chapter 5 of Part 7 was also relevant to the Options.

15. "Chargeable events" are defined in s 477(3) to include:

> "(a) the acquisition of securities pursuant to the employment-related securities option by an associated person, [or]
>
> (b) …the release for consideration of the employment-related securities option by an associated person…"

The term "associated person" includes the person who acquired the option or the employee if different (s 472(1)).

16. The amount included in employment income is determined under s 478, which provides that the taxable amount (which counts as employment income) is "AG-DA", where AG is the "total amount of the gain realised on the occurrence of the chargeable event" and DA is the total of any "deductible amounts". The deductible amount concept includes any consideration given for the option and was not suggested to be relevant in this case. The "amount of the gain" is determined under s 479. Where the chargeable event is the acquisition of securities, s 479 provides (subject to irrelevant exceptions) that the amount of the gain realised is "MV-C", where:

> "MV is the market value of the securities that are acquired at the time when they are acquired, and
>
> C is the amount of any consideration given for the securities that are acquired".

17. Section 479(5) is in point where the chargeable event is the release of an option and provides that the amount of the gain realised is the "amount of the consideration given for the … release".

18. HMRC's position in relation to the Options was that Chapter 5 of Part 7 was also relevant to them, and that if they were wrong in saying that the Options lapsed automatically upon termination then they were released for consideration within s 477(3)(b).

The charge on specific employment income

19. Under s 9 the amount charged to tax in respect of specific employment income is the "net taxable specific income" from an employment for the year. This is calculated under s 12 by reference to the formula "TSI-DSI", where TSI is the amount of any "taxable specific income from the employment for the tax year", and DSI is certain specified deductions. "Taxable specific income" is defined in s 10(3) as the full amount of any specific employment income that counts as employment income by virtue of Part 6 or 7 or another enactment. Neither party suggested that "DSI" was relevant.

The parties' submissions in summary

20. Mr Waldegrave, for the appellant, argued that the Compromise Agreement amounted to a bargain under which (a) BNP gave the appellant cash and the SIP shares and (b) in return the appellant gave up the Options, and that the appellant should only be taxed on the net amount (that is, the value of (a) minus the value of (b)) on the basis that the release of the Options was consideration for the amounts received. He submitted that the value of the Options should be apportioned between the cash and SIP shares by reference to their relative values, and the amounts taxable under Part 6 and Part 7 determined accordingly.

21. Mr Waldegrave submitted that it was implicit in the FTT decision that the Options were given up under the Compromise Agreement. If he was wrong on that

then this Tribunal could make a finding to that effect in the course of remaking the FTT decision. And even if there was another reason why the appellant lost the Options that reason was nevertheless overtaken by the Compromise Agreement, which was comprehensive. The same applied to the SIP shares: even if the original terms of the SIP did not require the appellant to pay for the SIP shares the effect of the Compromise Agreement was that he had to give consideration, being the release of the Options. It did not matter that the appellant did not appreciate at the time that he was giving up the Options.

22. Mr Conolly, for HMRC, submitted that the FTT's decision was correct. If it was necessary to decide the point then the Options had in fact lapsed automatically on termination of employment, and so could not count as consideration: the appellant had nothing to give up. At most the fact that he had lost valuable Options had been relevant to setting the amount of compensation the appellant received on termination. If that was wrong then the release of the Options under the Compromise Agreement was itself a chargeable event under Chapter 5 of Part 7 as a release for consideration (within s 477(3)(b)), with the result that the full amount of the cash and SIP shares received remained taxable, subject only to the £30,000 exemption under Part 6. So the FTT was correct to conclude that it did not matter whether the Options lapsed automatically on termination or were cancelled under paragraph 8.

23. Mr Waldegrave's response to this was that the terms of the closure notice precluded HMRC from raising the argument that the release of the Options fell within s 477(3)(b), and even if that was not right it was a new argument that HMRC should not be permitted to raise.

The FTT's reasoning

24. The FTT's reasoning in rejecting the appellant's argument that a deduction should be given for the value of the Options is hard to follow. Having found that the Options were cancelled under paragraph 8 of the Compromise Agreement if they were not forfeited on termination, the FTT went on at [49] and [50] to deal with and reject an argument that it thought the appellant was making, which was that because the appellant did not understand at the time of the Compromise Agreement that it had the effect of cancelling the Options, that cancellation should be treated as a separate bargain which could reduce the amount on which the appellant was taxed. The FTT then went on to say at [51]:

> "Equally, we do not agree with HMRC that the Long Dated Options can be directly ascribed to the increase in the offer made to Mr Sjumarken from £60,000 to £117, 000. We have seen no evidence that it was the Long Dated Options which were the basis of this increase in the compromise sum. Our view is that any sum which might notionally be allocated to the Long Dated Options was deducted as part of the overall bargain represented by the Compromise Agreement which settled on the £117,000 payment, the release of the SIP shares and the CIP cash which was effectively net of any value ascribed to those option rights."

25. The references to "deducted" and "net of" cannot be reconciled with the facts of this case. They appear to suggest that the amounts received were lower than they would otherwise have been because any amount attributable to the Options had the effect of reducing them. As Mr Waldegrave pointed out that does not seem to make sense where the appellant is not allowed to keep the Options. Mr Conolly, for his part, did not seek to argue that the FTT was correct in this respect. Instead, he submitted, the FTT should be understood to have found that any amount attributed to the Options was included as part of the overall bargain.

Discussion

26. We have reached the conclusion that the appellant is not entitled to a reduction in the amount on which he is taxed by reference to the value of the Options. We therefore agree with the FTT's conclusions, but our reasoning differs from that of the FTT.

27. In reaching our decision we have not found it necessary to address HMRC's argument that the Options were in fact forfeited automatically on termination of employment, and for the purpose of this appeal we have assumed in the appellant's favour that the Options were given up under the Compromise Agreement. While we note that it would potentially be open to us to make a finding of fact on that issue, that power would arise only if were we to set aside the FTT's decision and choose to remake it (s 12(2) and (4) Tribunals, Courts and Enforcement Act 2007). Since we are not proposing to set aside the FTT decision we have not made any finding on the point.

The termination payment and CIP cash

28. As noted above the appellant's case was that part of the value of the Options should be treated as reducing the amount of the termination payment and CIP cash that was treated as taxable.

29. Chapter 3 of Part 6 and the related charging provisions do not expressly contemplate any form of deduction in determining the taxable amount which could apply to the Options. Section 401 simply refers to "payments … received". Section 403 provides that a payment within Chapter 3 counts as employment income to the extent it exceeds £30,000, and that cash is treated as received when it is paid (or payment is made on account) or when the recipient becomes entitled to require payment. The calculation in s 12 contemplates deductions - "DSI" in the formula - which might even exceed the taxable income (see s 12(2), set out in the Annex), but as already mentioned there was no suggestion that the DSI concept was relevant to the Options.

30. The appellant's argument that the cash amounts received should be determined net of an apportioned part of the value of the Options relied instead on part of Warren J's reasoning in the Upper Tribunal decision in *Martin v Revenue and Customs Commissioners* [2014] UKUT 429 (TC), [2015] STC 478. Briefly, Mr Martin had received a signing bonus in the tax year 2005-06 but under its terms was obliged to

repay part of it in the following year when his employment was terminated. The signing bonus had been designed to retain Mr Martin's services for a five year period, and the amount required to be repaid was calculated as a time apportioned part of the signing bonus according to the point in the period when he left. Mr Martin was taxed on the full amount paid as an emolument and the question was whether relief was available in respect of the amount repaid. Counsel for Mr Martin put forward two principal arguments. The first, on which Mr Waldegrave relied, was that the repayment meant that a corresponding part of the original bonus had ceased to be, or never was, "earnings" because as it turned out it had not been earned, so Mr Martin should be able to obtain a tax repayment for 2005-06 since his original tax return contained an error. The second was that the amount repaid was "negative earnings" for the purposes of s 11 ITEPA. (This second argument is referred to further at [58] and [59] below.)

31. Warren J decided the first point against Mr Martin, finding that the full payment had been earned for the purposes of the provisions of ITEPA governing general earnings. Counsel for Mr Martin had relied on *Edwards v Roberts* 19 TC 618 where a contingent payment was found not to have been earned until the contingency was satisfied, and argued that the bonus was contingent on Mr Martin staying for five years (with a pro rata part ceasing to be contingent, and therefore earned, each month). However, Warren J accepted HMRC's argument that under the terms of the arrangements Mr Martin's right to the bonus was fully vested when originally received and was not contingent. The obligation to repay did not affect this. Warren J went on to add at [27] that repayment was required only in certain events, so there were circumstances where no part of the bonus had to be repaid. This supported the conclusion that Mr Martin did not have a right which only accrued over the five year period.

32. Mr Waldegrave relied on the fact that Warren J accepted in principle that an amount must be earned as well as received, but found on the facts that the bonus had indeed been earned. In contrast, in this case the appellant only ever obtained a net amount. The position was no different in principle to a situation where the appellant received 100 of cash but immediately had to pay 20 back: the true receipt was 80 and it would be unrealistic to tax him on 100 as a payment received.

33. We can see that, where a taxpayer receives an excessive amount by mistake and has to repay part of it, that might form the basis of an argument that the full amount was not "received" as the statute contemplates. So using the example numbers above the true "payment received" may be 80. We can also see that in some cases part of the amount received may, on a true construction of the arrangement, be a payment that falls outside Chapter 3 of Part 6. An example might be a case where, as well as agreeing a termination sum of 80, the employer agrees to pay 20 for an asset owned by the employee (such as a car the employee no longer requires). The total cash passing might be 100, but the receipt for the purpose of ITEPA may be only 80. However, that will depend on the terms of the arrangements and whether the 20 was in reality a price paid for the car, or was in fact paid "in consequence of, or otherwise in connection with" the termination of employment as referred to in s 401(1) (noting that this drafting is very broad).

34. The difficulty facing the appellant is the breadth of s 401(1) and the fact that the legislation simply does not contemplate the kind of deduction that he is seeking to make. This was not a contingent amount of the kind considered in *Edwards v Roberts*, and even if it was it would not necessarily follow that the principles discussed in *Martin* transfer to the statutory regime dealing with termination payments. We do not consider that either the termination payment or the payment of the CIP cash could realistically be said to have been reduced or "netted down" by reference to any part of the value of the Options. The appellant received the full amount of the agreed termination payment and the amount he was entitled to under the CIP arrangements. No part of the cash was realistically paid otherwise than as referred to in s 401(1), and there is no relevant provision that entitles the appellant to make deductions from those payments of the kind sought by the appellant.

The SIP shares

35. Turning to the SIP shares, the appellant's case was that the receipt of the SIP shares was taxable under Chapter 5 of Part 7 and that an appropriate part of the value of the Options constituted "consideration given for the securities acquired" within s 479. It therefore fell to be deducted in calculating the amount of the gain. Apportionment was expressly contemplated by s 421A(2), which requires consideration given partly for one thing and partly another to be apportioned on a just and reasonable basis.

36. Consideration is classically defined in terms of benefit to the promisor or detriment to the promisee (*Chitty on Contracts*, paragraph 4-004). Lord Lindley expressed it in the following way in the Privy Council decision in *Fleming v Bank of New Zealand* [1900] AC 577 at 586, quoting from the judgment of Lush J in *Currie v Misa* (1875) LR 10 Exch 153 at 162:

> "A valuable consideration in the sense of the law, may consist either in some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other ..."

37. It is clearly possible that a release of options can amount to consideration as a matter of law. In principle there would be a detriment to the promisee even if on the facts there is no benefit to the promisor (for example, where the options in question had been granted by another person). However, the question is whether on the facts of this case the release of the Options could be regarded as consideration given (partly) for the SIP shares.

38. Questions of what constitutes consideration, and what consideration is given for, have arisen in a tax context in a number of cases relating to the computation of chargeable gains. Although not cited to us, we have found it helpful to have regard to some of them. It is clear from these cases that the answer will depend on the correct construction of the relevant agreement. The leading case is the House of Lords decision in *Aberdeen Construction Group Ltd v IRC* [1978] STC 127. In that case shares in a company had been sold "for the sum of £250,000" but "subject to" conditions, the most important of which required the seller to waive a £500,000 loan

to the company. The shares had little or no value without the waiver. A majority of the House of Lords concluded that the price was paid both for the shares and for the waiver of the loan, rather than just for the shares.

39. Lord Wilberforce (with whom Lord Keith concurred) made it clear that this was a question of construction, saying at 131f: "The answer to this question must be found in the contract of 10 March 1971, interpreted, as any contract must be, against its background" and going on to say at 132d that the question was "… a pure matter of contract, what the £250,000 was paid for". In that case the seller had to both transfer the shares and waive the loan to receive the £250,000. Lord Fraser noted at 136 to 137 that the shares were virtually worthless without the loan waiver, and found that on the terms of the contract the seller undertook to both transfer the shares and waive the loan in return for the cash, it being "inconceivable" that £250,000 would have been paid for the shares without the waiver.

40. In *Spectros International plc v Madden* [1997] STC 114 Lightman J considered *Aberdeen Construction* and other cases in deciding whether a price of $20,001,000 apparently agreed to be paid for shares in a subsidiary was in fact consideration of $1,000 on the basis that $20m of that amount was required to be paid to the subsidiary's bank to pay off an overdraft. He concluded that upon a true construction of the agreements the consideration was in fact the higher, stated number. He commented as follows at page 136:

> "What is the relevant consideration may depend upon the terms and form of the transaction adopted by the parties. The parties to a proposed transaction frequently can achieve the same practical and economic result by different methods. Take for example the position of the owners of the entire issued capital of a company with gross assets of £2m and net assets (after discharging a debt of £1m owed to the owner or someone else) of £1m. The shares are worth £1m, but would be increased to £2m if the owner at his own cost and for the benefit of the company released or discharged the debt. In this situation, the owner may agree to sell his shares for £1m or, on condition that he first releases or discharges the debt, for £2m. The law respects the freedom of the parties to a transaction to frame and formulate their agreement as they wish and to suit their own legitimate interests (taxation and otherwise) and, so long as the form adopted is genuine, and not a sham, honest, and not a fraud on someone else, and does not contravene some established principle of public policy, the court will give effect to the method adopted. But as a corollary to this freedom, where the parties have chosen one method, it is not open to them to invite the court to treat as adopted some other method because it is more advantageous to them, because it leads to the same practical and economic result and because it is the more obvious and sensible method to have adopted. If the question is raised what method has been adopted and the transaction is in writing, the answer must be found in the true construction of the document or documents read in the light of all the relevant circumstances. If the terms of the documents are clear, that is the end of the question. If however there is any doubt or ambiguity upon the language used read in its proper context, it may be possible to

> resolve that doubt or ambiguity by reference to the inherent probabilities of businessmen entering into the transaction in one form rather than another."

41. This statement was cited with approval by Henderson J in *Revenue & Customs Commissioners v Collins* [2009] STC 1077 at [27]. Henderson J also referred to Lightman J's summary of principles derived from the speeches of the majority in *Aberdeen Construction* (also set out in *Spectros* at 136), which included that: "… any written contract must be read as a whole construed in the light of all relevant circumstances which include the value of the assets disposed of and business sense".

42. Applying these principles to this case, in our view the reference to "consideration given" in s 479 must have its ordinary meaning, namely the price that the appellant gave in order to acquire the SIP shares. Just as in *Aberdeen Construction* where Lord Wilberforce asked what the £250,000 was paid for, we need to ask whether the appellant released the Options partly for the SIP shares.

43. In a normal case where an option is exercised the consideration payable for the asset acquired would be the option exercise price paid under the terms on which the option was granted. However, we do not agree with Counsel for HMRC's submission that in this case that means that the consideration could only cover any amount required to be paid under the original terms of the SIP. The position will all depend on the facts and it could be that the original terms are varied by agreement. This could include a variation under the terms of the Compromise Agreement. But our reading of the Compromise Agreement, read in the light of the facts recorded in the FTT decision, is that it did not provide that the Options should be released as a price for the SIP shares.

44. Paragraph 7 of the Compromise Agreement dealt with both the release of the SIP shares and the CIP cash. It provided:

> "If you have DCS/SIP BNP Paribas shares they will be released to you within 21 days following actual receipt by [BNP] of the acceptance of this letter or the Termination Date if later. If you wish to sell your DCS/SIP BNP Paribas shares please complete the Sales Order Form…If you have CIP units the cash value will be paid to you at the same time as the cash payments set out in paragraph 5.
>
> The release of the DCS/SIP shares and the payment of the cash value of CIP units is a taxable event and will be subject to the operation of PAYE by the company. BNP Paribas reserves the right to deduct the income tax and national insurance due to the share release from the payments referred to in paragraph 5…"

The "Termination Date" was 18 October 2005. Paragraph 5 provided for the termination payment, and was expressed as follows:

> "In consequence of the termination of your employment and subject always to your acceptance of and continued compliance with all the terms and conditions of this letter [BNP] will make you the following payments:

> 5.1 £117,450 as a termination payment;
>
> 5.2 £100 in relation to your obligations in paragraph 9.
>
> These payments are made without any admission of liability by [BNP] …"

(Paragraph 9 related to confidentiality and non-solicitation.)

45. Whilst paragraph 7 of the Compromise Agreement provided that any SIP shares to which the appellant was entitled would be released, there is nothing that suggests that the Options would be given up as the price or part of the price for that. The number of SIP shares to which the appellant was entitled was clearly fixed by reference to earlier grants under the SIP, and the terms of the agreement do not suggest that the number or value of the shares were taken into account. The same applies to the CIP arrangements. Equally, paragraph 8 (set out at [7] above) is not specific to the Options and does not indicate that the value of the Options was relevant or that the SIP shares (or CIP cash) would be received to any extent in exchange for giving up the Options. The only amount that might, based on the terms of the agreement, possibly be considered to be paid to any extent in respect of the release of the Options is the (clearly negotiated) termination payment, which is made "subject … to … the terms and conditions of this letter …". But as already discussed we do not consider that this assists the appellant given the breadth of Chapter 3 of Part 6 (even disregarding the point that the FTT found no evidence that the termination payment had been increased by reference to the value of the Options).

46. Although certainly not conclusive on the point we think our analysis is reinforced by the appellant's lack of understanding at the time that he was losing the Options. This is not a case where a contracting party fails to appreciate the full terms of the price he has agreed to pay, rather it is a situation where the term in question has not been treated by either party as a price paid.

47. In our view paragraphs 7 and 8 simply form part of the overall terms on which the appellant settled all claims against BNP. This was provided for in paragraph 13:

> "By signing and returning the enclosed copy of this letter you accept the terms and conditions of this letter in full and final settlement of any and all claims and complaints whatsoever against [BNP] or any associated company or their respective officers or employees or former officers or employees, as to which no admission is made…"

48. If paragraph 8 did have the effect of cancelling the Options then that was a consequence of that term (and an unintended consequence as far as the appellant was concerned) rather than something that can properly be treated as "consideration given" by the appellant. There are many contractual terms that are or may prove to be onerous to one or other party, but that does not necessarily mean that they constitute consideration. Whether a term does constitute consideration will be determined by what the parties agree. For example, a contract for the sale of an asset will typically provide for the price to be paid (entirely) for that asset, even though the seller might also take on a number of additional obligations, for example restrictive covenants or warranties. But the position will differ if the parties agree that some part of the price

is to be allocated to one or more of those additional obligations. In this case there was no agreement between the parties that the Options should be forfeited to any extent in exchange for the SIP shares, or in consideration of the release of the SIP shares to the appellant. In contrast we note that under paragraph 5 of the Compromise Agreement a specific (albeit fairly nominal) amount was allocated to obligations assumed in relation to confidentiality and non-solicitation, indicating that where it was intended that consideration should be allocated to any item that was specifically set out.

Section 477(3)(b): closure notice and procedural aspects

49. As explained above Mr Conolly relied in the alternative on the release of the Options under the Compromise Agreement itself being a chargeable event under Chapter 5 of Part 7 as a release for consideration within s 477(3)(b). Mr Waldegrave objected to this on the basis that the scope of the closure notice precluded it, or alternatively on the basis that it was a new argument that should in any event not be permitted on case management grounds.

50. The correct approach to closure notices has of course been considered in a number of cases, of which the most significant are the Supreme Court decision in *Tower MCashback LLP and another v Commissioners for Her Majesty's Revenue & Customs* [2011] UKSC 19, [2011] STC 1143 and the Court of Appeal decision in *Fidex Ltd v Revenue and Customs Commissioners* [2016] EWCA Civ 385, [2016] STC 1920. The principles to apply were conveniently summarised by Kitchin LJ in *Fidex* at [45]:

> "In my judgment the principles to be applied are those set out by Henderson J as approved by and elaborated upon by the Supreme Court [in *Tower MCashback*]. So far as material to this appeal, they may be summarised in the following propositions:
>
> (i) The scope and subject matter of an appeal are defined by the conclusions stated in the closure notice and by the amendments required to give effect to those conclusions.
>
> (ii) What matters are the conclusions set out in the closure notice, not the process of reasoning by which HMRC reached those conclusions.
>
> (iii) The closure notice must be read in context in order properly to understand its meaning.
>
> (iv) Subject always to the requirements of fairness and proper case management, HMRC can advance new arguments before the FTT to support the conclusions set out in the closure notice."

51. At the time the closure notice was issued in this case the appellant's arguments were that both the SIP shares and the CIP cash should be treated as tax free. No argument had apparently been raised by the appellant about the Options and their effect on either of those amounts, or any effect of the Options on the termination payment. The closure notice cross referred to earlier correspondence which stated that both the SIP shares and CIP cash were taxable because neither plan was excluded from tax on the basis that it was approved (as the appellant had apparently

contended). The amendments made to the return by the closure notice reflected HMRC's view that these amounts were taxable.

52. We cannot accept Mr Waldegrave's submission that, because the closure notice was confined to the tax treatment of the SIP shares and CIP cash and did not address the tax treatment of the Options, the scope of the closure notice does not leave it open to HMRC to argue that amounts received by the appellant can be taxed under s 477(3)(b). The conclusion reached was that the *receipt* of the SIP shares and CIP cash was fully taxable. Whether some or all of that liability to tax arises because the receipt is taxable under s 477(3)(b) or because another provision applies is a question of the reasons for the conclusion reached. It was clearly concluded that the full amount received was fully taxable, and the scope of the appeal therefore covers whether and to what extent the receipt of the SIP shares and the CIP cash constitute taxable income. (As an aside, we note that the tax treatment of the termination payment does not appear to have been part of the conclusions reached, presumably because it was not in dispute at the time. However, the point was not raised by HMRC as a reason why the appellant could not now argue that he should not be taxed on the full amount of that payment, and we will say no more about it.)

53. The position would be quite different in circumstances where a closure notice relates to whether an amount is properly taxable and HMRC subsequently raises a separate issue, such as trying to challenge a claim for a relief which was included in the return and which was not queried during the enquiry, or was dropped by HMRC as an issue before the closure notice was issued. In that case HMRC may well not be able to challenge the relief on appeal, but that would be because the scope of the appeal would be restricted to the correct tax treatment of the amount received rather than whether the relief is available. But that is not the case here. This is not a separate claim for a relief, but simply an argument that the full amounts received are not taxable.

54. Mr Waldegrave also argued that HMRC should not be permitted to argue that s 477(3)(b) applied since that was a new argument that raised significant case management and evidential issues. He submitted that the FTT had made no relevant findings of fact and it was not possible to ascertain with any confidence whether and how Chapter 5 of Part 7 applied to the Options. There was very little information available about them. Although s 477 had been raised by HMRC before the FTT the first time this was done was in their skeleton argument for the rehearing of the appeal. That skeleton had also referred only to s 477(6), which relates to benefits received in connection with failing or undertaking not to acquire securities pursuant to an employment-related securities option, and not s 477(3)(b).

55. We do not think that case management or evidential issues should prevent HMRC from raising this issue. It was the appellant who chose to raise the argument, during the course of the appeal process, that the value of the Options reduced his taxable receipts. HMRC raised the application of Chapter 5 of Part 7 in response to that. Although they initially referred to s 477(6) rather than s 477(3)(b) the substantive point is the same and the appellant was clearly alerted to the argument that any consideration that was given in relation to the Options was taxable under Chapter 5.

We also note that the FTT referred to s 477(3)(b) as well as s 477(6) when summarising HMRC's arguments in relation to the Options at [37] and [38] of the FTT decision. This strongly indicates that the point was indeed raised before the FTT.

Section 477(3)(b): substantive issue

56. In our view the FTT found sufficient facts to form the basis of a conclusion that Chapter 5 of Part 7 could indeed apply to a release of the Options. It is clear from the description at [3] in the FTT decision that they were share options, and they therefore fell within the description of "securities option" in s 420(8). It is also clear from [3] that the appellant obtained the Options in his capacity as employee, so the opportunity to acquire them was clearly made available by reason of the appellant's employment as contemplated by s 471(1). They were therefore "employment related-securities options" as defined in s 471(5). In principle therefore a release for consideration by the appellant would be a chargeable event within s 477(3)(b). Under s 479(5) the amount of the gain treated as realised is the consideration given for the release. (This can be adjusted upwards in certain circumstances under s 479(7), but there is no indication that that is relevant, nor would it assist the appellant.) Under the "AG- DA" formula in s 478 (see [16] above) AG is therefore equal to the consideration. Where an option is released the deductible amounts ("DA") will cover any expenses incurred in connection with the release (s 480(2)(b)), but none have been suggested. The deductible amount concept also extends to any amount taxed as earnings when the option was acquired, but there was again no suggestion that any amount was taxed at that point, and it seems highly unlikely that it would have been. We are told by the FTT decision that the options were granted in March 2003 with a life of 10 years, and under the rules in force at that time no charge arose on the grant of an option if the life of the option did not exceed 10 years (s 135(2) Income and Corporation Taxes Act 1988, as amended). We also note that there was no suggestion that the Options were granted under an approved share scheme, and even if they were the relevant reliefs would operate to prevent a charge on exercise of the Options, not on release (see s 476(6)).

57. On the basis that Chapter 5 of Part 7 could in principle apply to the release of the Options, the question then becomes whether the appellant received consideration for the release. This clearly presents the appellant with a conundrum (which is no doubt why Mr Waldegrave's arguments focused on the procedural points). If the appellant did receive consideration for the release of the Options in the form of the SIP shares and/or cash, that consideration would be taxable under Chapter 5. If he did not then Chapter 5 would not apply but it would also not be possible for the appellant to succeed in arguing that the release of the Options was consideration for the SIP shares, because for that to be the case the reverse would also need to be true. So if we were wrong in our conclusion that any surrender of the Options under the Compromise Agreement was not consideration for the acquisition of the SIP shares the appellant would still not succeed. We can also see no basis on which the appellant could then succeed in his argument that the release of the Options should be treated as reducing the amount of taxable cash payments treated as received. Any amount which, contrary to our view, should somehow be netted off under the appellant's arguments would simply be taxed by another route.

Negative earnings

58. Before the FTT, and in his skeleton argument for this hearing, Mr Waldegrave also relied on the argument that the release of the Options constituted "negative earnings". This was the second argument considered in the *Martin* case (see [30] above) and was accepted by Warren J on the facts of that case.

59. Mr Waldegrave chose not to pursue this argument at the hearing and so we do not need to express any final view on it. We would note however that *Martin* was a case about emoluments, which constitute "general earnings" for ITEPA purposes. This means, among other things, that s 11 rather than s 12 was in point, and whereas s 11(3) specifically contemplates that taxable earnings can be negative there appears to be no equivalent in s 12. As Counsel for the appellant accepted, Warren J's analysis in *Martin* also relied on analysing whether the amount in question was effectively a mirror image of earnings. It is not obvious that a similar approach could apply in this case, where the amounts in question are taxable under specific statutory codes, but we need say nothing further.

Payment in lieu of notice

60. We should also record that at the hearing Counsel for the appellant appeared to suggest that the cash payments that should be treated as reduced by reference to the value of the Options should include the payment made in lieu of notice, which was assumed to be taxable as general earnings. However, the Compromise Agreement in fact makes no reference to that payment and so we cannot see any basis on which the appellant could argue that this was the case. The most obvious explanation for the lack of a reference to it is that it had already been paid, and this is what the documents before the FTT appear to indicate.

Late submissions by the appellant

61. Shortly prior to finalising this decision for release to the parties, the Tribunal received from Mr Sjumarken himself an unsolicited email (which appears not to have been copied to HMRC, or to Mr Sjumarken's counsel) in which he sought to make some additional submissions both of fact and law. In particular, he sought to raise again the question of "negative earnings" abandoned by Mr Waldegrave at the hearing.

62. It is not open to a party, following a hearing, to seek to supplement their case or raise additional, and to some extent contrary, points to those put forward on their behalf at the hearing itself. That applies just as much to self-represented parties (which, of course, Mr Sjumarken was not) as it does to those who are legally represented. There is an obvious prejudice, not only to the other party, but also to the proper administration of justice. Mr Sjumarken had every opportunity, through counsel, to put his case in the normal way at the hearing of his appeal. All submissions in the appeal were carefully considered by the Tribunal.

63. Mr Sjumarken says that he wished to give evidence at the hearing of this appeal. No application was made in that regard. But in any event it would not be appropriate

otherwise than in exceptional circumstances for fresh evidence to be taken on an appeal on a question of law. An exception might be if the Tribunal, having set aside a decision of the First-tier Tribunal, determined that it would make further findings of fact, but as we have described at [27] that does not apply in this case. The proper forum for findings of fact was the FTT; indeed in this case Mr Sjumarken had two opportunities before the FTT to make his factual case. It is simply too late for him to seek to do so after the appeal hearing in this Tribunal has been concluded.

64. Having said that, and although we will not admit the further submissions made by Mr Sjumarken, we should add that, having read them, they do not affect our decision on this appeal, which we have arrived at for the reasons we have explained.

Disposition

65. For the reasons set out above the appeal is dismissed.

JUDGE ROGER BERNER
JUDGE SARAH FALK

RELEASE DATE: 5 January 2017

ANNEX: extracts from ITEPA, as in force for 2005-06

A. Extracts from Part 2 ITEPA

6 Nature of charge to tax on employment income

(1) The charge to tax on employment income under this Part is a charge to tax on-

(a) general earnings, and

(b) specific employment income.

The meaning of "employment income", "general earnings" and "specific employment income" is given in section 7.

(2) The amount of general earnings or specific employment income which is charged to tax in a particular tax year is set out in section 9.

…

7 Meaning of "employment income", "general earnings" and "specific employment income"

(1) This section gives the meaning for the purposes of the Tax Acts of "employment income", "general earnings" and "specific employment income".

(2) "Employment income" means-

(a) earnings within Chapter 1 of Part 3,

(b) any amount treated as earnings (see subsection (5)), or

(c) any amount which counts as employment income (see subsection (6)).

(3) "General earnings" means-

(a) earnings within Chapter 1 of Part 3, or

(b) any amount treated as earnings (see subsection (5)),

excluding in each case any exempt income.

(4) "Specific employment income" means any amount which counts as employment income (see subsection (6)), excluding any exempt income.

(5) Subsection (2)(b) or (3)(b) refers to any amount treated as earnings under-

(a) Chapters 7 and 8 of this Part (application of provisions to agency workers and workers under arrangements made by intermediaries),

(b) Chapters 2 to 11 of Part 3 (the benefits code),

(c) Chapter 12 of Part 3 (payments treated as earnings), or

(d) section 262 of CAA 2001 (balancing charges to be given effect by treating them as earnings).

(6) Subsection (2)(c) or (4) refers to any amount which counts as employment income by virtue of-

(a) Part 6 (income which is not earnings or share-related),

(b) Part 7 (income and exemptions relating to securities and securities options), or

(c) any other enactment.

9 Amount of employment income charged to tax

(1) The amount of employment income which is charged to tax under this Part for a particular tax year is as follows.

(2) In the case of general earnings, the amount charged is the net taxable earnings from an employment in the year.

(3) That amount is calculated under section 11 by reference to any taxable earnings from the employment in the year (see section 10(2)).
(4) In the case of specific employment income, the amount charged is the net taxable specific income from an employment for the year.
(5) That amount is calculated under section 12 by reference to any taxable specific income from the employment for the year (see section 10(3)).
(6) Accordingly, no amount of employment income is charged to tax under this Part for a particular tax year unless-

(a) in the case of general earnings, they are taxable earnings from an employment in that year, or

(b) in the case of specific employment income, it is taxable specific income from an employment for that year.

10 Meaning of "taxable earnings" and "taxable specific income"

(1) This section explains what is meant by "taxable earnings" and "taxable specific income" in the employment income Parts.
(2) "Taxable earnings" from an employment in a tax year are to be determined in accordance with-

(a) Chapter 4 of this Part (rules applying to employees resident, ordinarily resident and domiciled in the UK), or

(b) Chapter 5 of this Part (rules applying to employees resident, ordinarily resident or domiciled outside the UK).

(3) "Taxable specific income" from an employment for a tax year means the full amount of any specific employment income which, by virtue of Part 6 or 7 or any other enactment, counts as employment income for that year in respect of the employment.

11 Calculation of "net taxable earnings"

(1) For the purposes of this Part the "net taxable earnings" from an employment in a tax year are given by the formula-

TE-DE

where-

TE means the total amount of any taxable earnings from the employment in the tax year, and

DE means the total amount of any deductions allowed from those earnings under provisions listed in section 327(3) to (5) (deductions from earnings: general).

(2) If the amount calculated under subsection (1) is negative, the net taxable earnings from the employment in the year are to be taken to be nil instead.
(3) Relief may be available under section 380(1) of ICTA (set-off against general income)-

(a) where TE is negative, or

(b) in certain exceptional cases where the amount calculated under subsection (1) is negative.

(4) If a person has more than one employment in a tax year, the calculation under subsection (1) must be carried out in relation to each of the employments.

12 Calculation of "net taxable specific income"

(1) For the purposes of this Part the "net taxable specific income" from an employment for a tax year is given by the formula-
TSI-DSI
where-
TSI means the amount of any taxable specific income from the employment for the tax year, and
DSI means the total amount of any deductions allowed from that income under provisions of the Tax Acts not included in the lists in section 327 (3) and (4) (deductions from earnings: general).
(2) If the amount calculated under subsection (1) is negative, the net taxable specific income from the employment for the year is to be taken to be nil instead.
(3) If a person has more than one kind of specific employment income from an employment for a tax year, the calculation under subsection (1) must be carried out in relation to each of those kinds of specific employment income; and in such a case the "net taxable specific income" from the employment for that year is the total of all the amounts so calculated.

B. Chapter 3 of Part 6 ITEPA: sections 401 and 403

401 Application of this Chapter
(1) This Chapter applies to payments and other benefits which are received directly or indirectly in consideration or in consequence of, or otherwise in connection with-

(a) the termination of a person's employment,

(b) a change in the duties of a person's employment, or

(c) a change in the earnings from a person's employment,

by the person, or the person's spouse or civil partner, blood relative, dependant or personal representatives.
(2) Subsection (1) is subject to subsection (3)...
(3) This Chapter does not apply to any payment or other benefit chargeable to income tax apart from this Chapter.
(4) For the purposes of this Chapter-

(a) a payment or other benefit which is provided on behalf of, or to the order of, the employee or former employee is treated as received by the employee or former employee, and

(b) in relation to a payment or other benefit-

(i) any reference to the employee or former employee is to the person mentioned in subsection (1), and

(ii) any reference to the employer or former employer is to be read accordingly.

403 Charge on payment or other benefit
(1) The amount of a payment or benefit to which this Chapter applies counts as employment income of the employee or former employee for the relevant tax year if and to the extent that it exceeds the £30,000 threshold.
(2) In this section "the relevant tax year" means the tax year in which the payment or other benefit is received.

(3) For the purposes of this Chapter-

(a) a cash benefit is treated as received-

(i) when it is paid or a payment is made on account of it, or

(ii) when the recipient becomes entitled to require payment of or on account of it, and

(b) a non-cash benefit is treated as received when it is used or enjoyed.

…

(6) In this Chapter references to the taxable person are to the person in relation to whom subsection (1) or (5) provides for an amount to count as employment income.

C. Part 7 ITEPA

Chapter 1

420 Meaning of "securities" etc

(1) Subject to subsections (5) and (6), for the purposes of this Chapter and Chapters 2 to 5 the following are "securities"—

(a) shares in any body corporate (wherever incorporated) or in any unincorporated body constituted under the law of a country or territory outside the United Kingdom…

…

(8) In this Chapter and Chapters 2 to 5—

…

"securities option" means a right to acquire securities…

421A Meaning of "consideration"

(1) This section applies for determining for the purposes of Chapters 2 to 5 the amount of the consideration given for anything.

(2) If any consideration is given partly in respect of one thing and partly in respect of another, the amount given in respect of the different things is to determined [sic] on a just and reasonable apportionment.

(3) The consideration which is taken to be given wholly or partly for anything does not include the performance of any duties of, or in connection with, an employment.

(4) No amount is to be counted more than once in calculating the amount of any consideration.

Chapter 5

471 Options to which this Chapter applies

(1) This Chapter applies to a securities option acquired by a person where the right or opportunity to acquire the securities option is available by reason of an employment of that person or any other person.

(2) For the purposes of subsection (1) "employment" includes a former or prospective employment.

(3) A right or opportunity to acquire a securities option made available by a person's employer, or a person connected with a person's employer, is to be regarded for the purposes of subsection (1) as available by reason of an employment of that person unless-

(a) the person by whom the right or opportunity is made available is an individual, and
(b) the right or opportunity is made available in the normal course of the domestic, family or personal relationships of that person.
(4) A right or opportunity to acquire a securities option available by reason of holding employment-related securities is to be regarded for the purposes of subsection (1) as available by reason of the same employment as that by reason of which the right or opportunity to acquire the employment-related securities was available.
(5) In this Chapter-
"the acquisition", in relation to an employment-related securities option, means the acquisition of the employment-related securities option pursuant to the right or opportunity available by reason of the employment,
"the employment" means the employment by reason of which the right or opportunity to acquire the employment-related securities option is available ("the employee" and "the employer" being construed accordingly), and
"employment-related securities option" means a securities option to which this Chapter applies.

472 Associated persons
(1) For the purposes of this Chapter the following are "associated persons" in relation to an employment-related securities option-
(a) the person who acquired the employment-related securities option on the acquisition,
(b) (if different) the employee…

473 Introduction to taxation of securities options
(1) The starting-point is that section 475 contains an exemption from the liability to tax that might otherwise arise under-
(a) Chapter 1 of Part 3 (earnings), or
(b) Chapter 10 of that Part (taxable benefits: residual liability to charge),
when an employment-related securities option is acquired.
(2) Liability to tax may arise, when securities are acquired pursuant to the employment-related securities option, under-
(a) …
(b) …, or
(c) section 476 (acquisition of securities pursuant to securities option).

(3) Liability to tax may also arise by virtue of section 476 when-
(a) the employment-related securities option is assigned or released, or
(b) a benefit is received in connection with the employment-related securities option.
(4) …

474 Cases where this Chapter does not apply
(1) This Chapter (apart from sections 473 and 483) does not apply in relation to an employment-related securities option if, at the time of the acquisition, the earnings from the employment were not (or would not have been if there had been any) general

earnings to which section 15 or 21 applies (earnings for year when employee resident and ordinarily resident in the UK).
(2) This Chapter (apart from sections 473 and 483) does not apply in the case of a former employment if it would not apply if the acquisition had taken place in the last tax year in which the employment was held.
(3) This Chapter (apart from sections 473 and 483) does not apply in the case of a prospective employment if it would not apply if the acquisition had taken place in the first tax year in which the employment is held.
(4) Where the employment-related securities option is a new option (within the meaning of section 483), the references in this section to the acquisition are to the acquisition of the old option (within the meaning of that section).

475 No charge in respect of acquisition of option
(1) No liability to income tax arises in respect of the acquisition of an employment-related securities option.
(2) …

476 Charge on occurrence of chargeable event
(1) If a chargeable event occurs in relation to an employment-related securities option, the taxable amount counts as employment income of the employee for the relevant tax year.
(2) For this purpose-
(a) "chargeable event" has the meaning given by section 477,
(b) "the taxable amount" is the amount determined under section 478, and
(c) "the relevant tax year" is the tax year in which the chargeable event occurs.
…
(6) This section is subject to—
section 519 (approved SAYE option schemes: no charge in respect of exercise of share option by employee),
section 524 (approved CSOP schemes: no charge in respect of exercise of share option by employee), and
section 530 (enterprise management incentives: no charge on exercise by employee of option to acquire shares at market value)

477 Chargeable events
(1) This section applies for the purposes of section 476 (charge on occurrence of chargeable event).
(2) Any of the events mentioned in subsection (3) is a "chargeable event" in relation to the employment-related securities option unless it occurs on or after the death of the employee.
(3) The events are-
(a) the acquisition of securities pursuant to the employment-related securities option by an associated person,
(b) the assignment for consideration of the employment-related securities option by an associated person otherwise than to another associated person or the release for consideration of the employment-related securities option by an associated person, or

(c) the receipt by an associated person of a benefit in connection with the employment-related securities option (other than one within paragraph (a) or (b)).

…

(6) A benefit in money or money's worth received in consideration for or otherwise in connection with-

(a) failing or undertaking not to acquire securities pursuant to the employment-related securities option, or

(b) granting or undertaking to grant to another person a right to acquire securities which are subject to the employment-related securities option or any interest in them,

is to be regarded for the purposes of subsection (3)(c) as received in connection with the employment-related securities option.

(7) For the purposes of section 476(5) (charge to income tax) the relevant person in relation to a chargeable event is-

(a) in the case of an event that is a chargeable event by virtue of subsection (3)(a), the person by whom the securities are acquired, and

(b) in the case of an event that is a chargeable event by virtue of subsection (3)(b) or (c), the person by whom the consideration or benefit is received.

478 Amount of charge

(1) The taxable amount for the purposes of section 476 (charge on occurrence of chargeable event) is-

AG-DA

where-

AG is the amount of any gain realised on the occurrence of the chargeable event, and

DA is the total of any deductible amounts.

(2) Section 479 explains what is the amount of any gain realised on the occurrence of a chargeable event.

(3) Section 480 specifies what are deductible amounts.

479 Amount of gain realised on occurrence of chargeable event

(1) This section applies for the purposes of section 478 (amount of charge on occurrence of chargeable event).

(2) The amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 477(3)(a) (acquisition of securities) is (subject to subsection (4))-

MV-C

(3) In subsection (2)-

MV is the market value of the securities that are acquired at the time when they are acquired, and

C is the amount of any consideration given for the securities that are acquired.

(4) …

(5) The amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 477(3)(b) (assignment or release of option) is the amount of the consideration given for the assignment or release.

(6) The amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 477(3)(c) (receipt of benefit in connection with option) is the amount or market value of the benefit.

(7) But if-
(a) the consideration mentioned in subsection (5), or
(b) the benefit mentioned in subsection (6),
consists (in whole or in part) in the provision of securities or an interest in securities the market value of which has been reduced by at least 10% as a result of things done otherwise than for genuine commercial purposes within the period of 7 years ending with the receipt of the consideration or benefit, its market value is to be taken to be what it would be but for the reduction.
…

480 Deductible amounts
(1) This section applies for the purposes of section 478 (amount of charge on occurrence of chargeable event).
(2) The amount of-
(a) any consideration given for the acquisition of the employment-related securities option, and
(b) the amount of any expenses incurred in connection with the acquisition of securities, assignment, release or receipt which constitutes the chargeable event,
is a deductible amount.
(3) …
(4) If an amount counts as employment income of the employee under section 526 (approved CSOP schemes: charge where option granted at a discount) in respect of the employment-related securities option, so much of that amount as is attributable to the shares in question is a deductible amount.
(5) The following are also deductible amounts-
(a) any amount that constituted earnings from the employment under Chapter 1 of Part 3 (earnings) in respect of the acquisition of the employment-related securities option,
(b) any amount that was treated as earnings from the employment under Chapter 10 of that Part (taxable benefits: residual liability to charge) in respect of the acquisition of the employment-related securities option, and
(c) the amount of any gain by a previous holder on an assignment of the employment-related securities option which would have been a deductible cost by virtue of subsection (2)(c) of section 479 (as originally enacted) on an exercise of the option at a time when that section was in force.
(6) If there has been a previous chargeable event in relation to the employment-related securities option (or if section 476 or 477 as originally enacted applied to the option by virtue of an earlier event), so much of any deductible amount as was deducted in calculating the taxable amount on the occasion of that event is to be regarded as not being a deductible amount.

….

484 Definitions
(1) In this Chapter-
"securities", and
"securities option",

have the meaning indicated in section 420.
(2) In this Chapter "market value" has the meaning indicated in section 421(1).
(3) For the purposes of this Chapter sections 421(2) and 421A apply for determining the amount of consideration given for anything.
(4) In this Chapter "employment-related securities" has the same meaning as in Chapter 1 of this Part (see section 421B(8)).
(5) In this Chapter-
"the acquisition",
"the employee",
"the employer",
"the employment", and
"employment-related securities option",
have the meaning indicated in section 471(5).
(6) In this Chapter "associated person" has the meaning indicated in section 472.
(7) …