

## SCHEDULE 11

(introduced by section 27)

### RECONSTRUCTION RELIEF AND ACQUISITION RELIEF

#### PART 1

##### INTRODUCTORY

###### *Overview*

- 1 (1) This schedule provides for relief for certain transactions in connection with the reconstruction and acquisition of companies.
- (2) It is arranged as follows—
  - Part 2 provides for when reconstruction relief is available,
  - Part 3 provides for when acquisition relief is available,
  - Part 4 provides for when the relief is withdrawn,
  - Part 5 defines expressions used in this schedule.

#### PART 2

##### RECONSTRUCTION RELIEF

###### *The relief*

- 2 A land transaction is exempt from charge if—
  - (a) it is entered into for the purposes of or in connection with the transfer of an undertaking or part of an undertaking, and
  - (b) the qualifying conditions are met.

###### *Qualifying conditions*

- 3 The qualifying conditions are—
  - (a) that a company (“the acquiring company”) acquires the whole or part of the undertaking of another company (“the target company”) in pursuance of a scheme for the reconstruction of the target company,
  - (b) that the consideration for the acquisition consists wholly or partly of the issue of non-redeemable shares in the acquiring company to all shareholders of the target company,
  - (c) that after the acquisition has been made—
    - (i) each shareholder of each of the companies is a shareholder of the other, and
    - (ii) the proportion of shares of one of the companies held by any shareholder is the same, or as nearly as may be the same, as the proportion of shares of the other company held by that shareholder,
  - (d) that the acquisition—
    - (i) is effected for bona fide commercial reasons, and

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(ii) does not form part of arrangements the main purpose, or one of the main purposes, of which is the avoidance of liability to the tax.

4 Where the consideration for the acquisition consists partly of the issue of non-redeemable shares as mentioned in the qualifying condition (b), that condition is met only if the rest of the consideration consists wholly of the assumption or discharge by the acquiring company of liabilities of the target company.

5 If, immediately before the acquisition, the target company or the acquiring company holds any of its own shares, the shares are treated for the purposes of qualifying conditions (c) and (d) as having been cancelled before the acquisition (and, accordingly, the company is to be treated as if it were not a shareholder of itself).

### PART 3

#### ACQUISITION RELIEF

##### *The relief*

- 6 (1) This paragraph applies where—
- (a) a land transaction is entered into for the purposes of or in connection with the transfer of an undertaking or part of an undertaking, and
  - (b) the qualifying conditions are met.
- (2) The tax chargeable in respect of the transaction is the prescribed proportion of the tax that would otherwise be chargeable but for this paragraph.
- (3) The prescribed proportion is such proportion as may be prescribed by the Scottish Ministers by order.

##### *Qualifying conditions*

- 7 The qualifying conditions are—
- (a) that a company (“the acquiring company”) acquires the whole or part of the undertaking of another company (“the target company”),
  - (b) that the consideration for the acquisition consists wholly or partly of the issue of non-redeemable shares in the acquiring company to—
    - (i) the target company, or
    - (ii) all or any of the target company’s shareholders,
  - (c) that the acquiring company is not associated with another company that is a party to arrangements with the target company relating to shares of the acquiring company issued in connection with the transfer of the undertaking or part,
  - (d) that the undertaking or part acquired by the acquiring company has as its main activity the carrying on of a trade that does not consist wholly or mainly of dealing in chargeable interests,
  - (e) that the acquisition—
    - (i) is effected for bona fide commercial reasons, and
    - (ii) does not form part of arrangements the main purpose, or one of the main purposes, of which is the avoidance of liability to the tax.

- 8 Where the consideration for the acquisition consists partly of the issue of non-redeemable shares as mentioned in qualifying condition (b), that condition is met only if the rest of the consideration consists wholly of—
- (a) cash not exceeding 10% of the nominal value of the non-redeemable shares so issued,
  - (b) the assumption or discharge by the acquiring company of liabilities of the target company, or
  - (c) both of those things.

#### *Interpretation*

- 9 For the purposes of qualifying condition (c)—
- (a) companies are associated if one has control of the other or both are controlled by the same person or person,
  - (b) “control” is to be construed in accordance with section 1124 of the Corporation Tax Act 2010 (c.4).
- 10 In this Part of this schedule, “trade” includes any venture in the nature of trade.

## **PART 4**

### WITHDRAWAL OF RELIEF

#### *Overview*

- 11 This Part of this schedule is arranged as follows—
- paragraphs 12 to 14 provide for circumstances in which relief under Part 2 or Part 3 of this schedule is withdrawn or partially withdrawn,
  - paragraphs 15 to 21 provide for circumstances in which, despite paragraphs 12 to 14, relief is not withdrawn,
  - paragraphs 22 to 28 provide for the withdrawal of relief, which would otherwise not be withdrawn by virtue of paragraph 17 or 19, on the occurrence of certain subsequent events,
  - paragraphs 29 to 32 provide for how the tax chargeable is determined where relief is withdrawn or partially withdrawn.

#### *Withdrawal of relief*

- 12 Relief under Part 2 or Part 3 of this schedule is withdrawn or partially withdrawn where paragraphs 13 and 14 apply.
- 13 This paragraph applies where control of the acquiring company changes—
- (a) before the end of the period of 3 years beginning with the effective date of the transaction which is exempt from charge by virtue of Part 2, or is subject to a reduced amount of tax by virtue of Part 3, of this schedule (“the relevant transaction”), or
  - (b) in pursuance of, or in connection with, arrangements made before the end of that period.

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- 14 This paragraph applies where, at the time the control of the acquiring company changes (“the relevant time”), it or a relevant associated company holds a chargeable interest—
- (a) that was acquired by the acquiring company under the relevant transaction, or
  - (b) that is derived from a chargeable interest so acquired,
- and that has not subsequently been acquired at market value under a chargeable transaction in relation to which relief under this schedule was available but was not claimed.

*Case where relief not withdrawn: change of control of acquiring company as result of transaction connected to divorce etc.*

- 15 Relief under Part 2 or Part 3 of this schedule is not withdrawn where control of the acquiring company changes as a result of a share transaction that is effected as mentioned in—
- (a) any of paragraphs (a) to (d) of paragraph 4 of schedule 1 (transactions connected with divorce etc.), or
  - (b) any of paragraphs (a) to (d) of paragraph 5 of schedule 1 (transactions connected with dissolution of civil partnership etc.).
- 16 Relief under Part 2 or Part 3 of this schedule is not withdrawn where control of the acquiring company changes as a result of a share transaction that—
- (a) is effected as mentioned in paragraph 7(1) of schedule 1, and
  - (b) meets the conditions in paragraph 7(2) of that schedule (variation of testamentary dispositions etc.).

*Case where relief not withdrawn: exempt intra-group transfer*

- 17 Relief under Part 2 or Part 3 of this schedule is not withdrawn where control of the acquiring company changes as a result of an exempt intra-group transfer.
- 18 But see paragraphs 22 to 24 for the effect of a subsequent non-exempt transfer.

*Case where relief not withdrawn: share acquisition relief*

- 19 Relief under Part 2 or Part 3 of this schedule is not withdrawn where control of the acquiring company changes as a result of a transfer of shares to another company in relation to which share acquisition relief applies.
- 20 But see paragraphs 25 to 28 for the effect of a change in the control of that other company.

*Case where relief not withdrawn: controlling loan creditor*

- 21 Relief under Part 2 or Part 3 of this schedule is not withdrawn where—
- (a) control of the acquiring company changes as a result of a loan creditor (within the meaning of section 453 of the Corporation Tax Act 2010 (c.4)) becoming, or ceasing to be, treated as having control of the company, and
  - (b) the other persons who were previously treated as controlling the company continue to be so treated.

*Withdrawal of relief on subsequent non-exempt transfer*

- 22 Relief under Part 2 or Part 3 of this schedule is withdrawn or partially withdrawn if—
- (a) control of the acquiring company changes as a result of an exempt intra-group transfer, and
  - (b) paragraphs 23 and 24 apply.
- 23 This paragraph applies where a company holding shares in the acquiring company to which the exempt intra-group transfer related, or that are derived from shares to which that transfer related, ceases to be a member of the same group as the target company—
- (a) before the end of the period of 3 years beginning with the effective date of the transaction which is exempt from charge by virtue of Part 2, or is subject to a reduced amount of tax by virtue of Part 3, of this schedule (“the relevant transaction”), or
  - (b) in pursuance of, or in connection with, arrangements made before the end of that period.
- 24 This paragraph applies where the acquiring company or a relevant associated company, at that time (“the relevant time”), holds a chargeable interest—
- (a) that was transferred to the acquiring company by the relevant transaction, or
  - (b) that is derived from an interest so transferred,
- and that has not subsequently been transferred at market value under a chargeable transaction in relation to which relief under Part 2 or Part 3 of this schedule was available but was not claimed.

*Withdrawal of relief where share acquisition relief applied but control of company subsequently changes*

- 25 Relief under Part 2 or Part 3 of this schedule is withdrawn or partially withdrawn if—
- (a) control of the acquiring company changes as a result of a transfer of shares to another company in relation to which share acquisition relief applies, and
  - (b) paragraphs 26 to 28 apply.
- 26 This paragraph applies where control of the other company mentioned in paragraph 25(a) changes—
- (a) before the end of the period of 3 years beginning with the effective date of the relevant transaction, or
  - (b) in pursuance of, or in connection with, arrangements made before the end of that period.
- 27 This paragraph applies where, at the time control of that other company changes, it holds shares transferred to it by the transfer mentioned in paragraph 25(a), or any shares derived from shares so transferred.
- 28 This paragraph applies where the acquiring company or a relevant associated company, at that time (“the relevant time”), holds a chargeable interest—
- (a) that was transferred to the acquiring company by the relevant transaction, or
  - (b) that is derived from an interest so transferred,
- and that has not subsequently been transferred at market value under a chargeable transaction in relation to which relief under Part 2 or Part 3 of this schedule was available but was not claimed.

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*Amount of tax chargeable where relief withdrawn*

- 29 Where relief is withdrawn, the amount of tax chargeable is determined in accordance with paragraph 30.
- 30 The amount chargeable is the tax that would have been chargeable in respect of the relevant transaction but for the relief if the chargeable consideration for that transaction had been an amount equal to—
- (a) the market value of the subject-matter of the transaction,
  - (b) if the acquisition was the grant of a lease, the rent.

*Amount of tax chargeable where relief partially withdrawn*

- 31 Where relief is partially withdrawn, the tax chargeable is an appropriate proportion of the amount determined in accordance with paragraph 30.
- 32 An “appropriate proportion” means an appropriate proportion having regard to—
- (a) the subject-matter of the relevant transaction, and
  - (b) what is held at the relevant time by the acquiring company or, as the case may be, by that company and any relevant associated companies.

*Interpretation*

- 33 In paragraphs 19 and 25—
- (a) “share acquisition relief” means relief under section 77 of the Finance Act 1986 (c.41), and
  - (b) a transfer is one in relation to which that relief applies if an instrument effecting the transfer is exempt from stamp duty by virtue of that provision.
- 34 In this Part of this schedule, references to control of a company changing are to the company becoming controlled—
- (a) by a different person,
  - (b) by a different number of persons, or
  - (c) by two or more persons at least one of whom is not the person, or one of the persons, by whom the company was previously controlled.
- 35 In this Part of this schedule—
- “control” is to be construed in accordance with sections 450 and 451 of the Corporation Tax Act 2010 (c.4),
- “exempt intra-group transfer” means a transfer of shares effected by an instrument that is exempt from stamp duty by virtue of section 42 of the Finance Act 1930 (c.28) or section 11 of the Finance Act (Northern Ireland) 1954 (c.23 (NI)) (transfers between associated bodies corporate),
- “relevant associated company”, in relation to the acquiring company, means a company—
- (a) that is controlled by the acquiring company immediately before the control of that company changes, and
  - (b) of which control changes in consequence of the change of control of that company.

## PART 5

### INTERPRETATION

#### *When are companies members of the same group?*

- 36 Companies are members of the same group if one is the 75% subsidiary of the other or both are 75% subsidiaries of a third company.

#### *When is a company a subsidiary of another company?*

- 37 A company (A) is the 75% subsidiary of another company (B) if B—
- (a) is beneficial owner of not less than 75% of the ordinary share capital of A,
  - (b) is beneficially entitled to not less than 75% of any profits available for distribution to equity holders of A, and
  - (c) would be beneficially entitled to not less than 75% of any assets of A available for distribution to its equity holders on a winding-up.
- 38 For the purposes of paragraph 37—
- (a) the ownership referred to in that paragraph is ownership either directly or through another company or companies, and
  - (b) the amount of ordinary share capital of A owned by B through another company or companies is to be determined in accordance with sections 1155 to 1157 of the Corporation Tax Act 2010 (c.4).
- 39 “Ordinary share capital”, in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company.
- 40 Chapter 6 of Part 5 of the Corporation Tax Act 2010 (c.4) (group relief: equity holders and profits or assets available for distribution) applies for the purposes of paragraph 37(b) and (c) as it applies for the purposes of section 151(4)(a) and (b) of that Act.
- 41 But sections 171(1)(b) and (3), 173, 174 and 176 to 178 of that Chapter are to be treated as omitted for the purposes of paragraph 37(b) and (c).

#### *Other definitions*

- 42 In this schedule—
- “arrangements” include any scheme, agreement or understanding, whether or not legally enforceable,
  - “non-redeemable shares” means shares that are not redeemable shares.