



# Taxation of Chargeable Gains Act 1992

## 1992 CHAPTER 12

### PART VI

COMPANIES, OIL, INSURANCE ETC.

#### CHAPTER I

COMPANIES

*Transactions within groups*

#### **171 Transfers within a group: general provisions**

- (1) Notwithstanding any provision in this Act fixing the amount of the consideration deemed to be received on a disposal or given on an acquisition, where a member of a group of companies disposes of an asset to another member of the group, both members shall, except as provided by subsections (2) and (3) below, be treated, so far as relates to corporation tax on chargeable gains, as if the asset acquired by the member to whom the disposal is made were acquired for a consideration of such amount as would secure that on the other's disposal neither a gain nor a loss would accrue to that other; but where it is assumed for any purpose that a member of a group of companies has sold or acquired an asset, it shall be assumed also that it was not a sale to or acquisition from another member of the group.
- (2) Subsection (1) above shall not apply where the disposal is—
  - (a) a disposal of a debt due from a member of a group of companies effected by satisfying the debt or part of it; or
  - (b) a disposal of redeemable shares in a company on the occasion of their redemption; or
  - (c) a disposal by or to an investment trust; or
  - (d) a disposal to a dual resident investing company; or
  - (e) a disposal to a company which, though resident in the United Kingdom—

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- (i) is regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom, and
- (ii) by virtue of the arrangements would not be liable in the United Kingdom to tax on a gain arising on a disposal of the asset occurring immediately after its acquisition;

and the reference in subsection (1) above to a member of a group of companies disposing of an asset shall not apply to anything which under section 122 is to be treated as a disposal of an interest in shares in a company in consideration for a capital distribution (as defined in that section) from that company, whether or not involving a reduction of capital.

- (3) Subsection (1) above shall not apply to a transaction treated by virtue of sections 127 and 135 as not involving a disposal by the company first mentioned in that subsection.
- (4) For the purposes of subsection (1) above, so far as the consideration for the disposal consists of money or money's worth by way of compensation for any kind of damage or injury to assets, or for the destruction or dissipation of assets or for anything which depreciates or might depreciate an asset, the disposal shall be treated as being to the person who, whether as an insurer or otherwise, ultimately bears the burden of furnishing that consideration.

## **172 Transfer of United Kingdom branch or agency**

- (1) Subject to subsections (3) and (4) below, subsection (2) below applies for the purposes of corporation tax on chargeable gains where—
  - (a) there is a scheme for the transfer by a company (“company A”)—
    - (i) which is not resident in the United Kingdom, but
    - (ii) which carries on a trade in the United Kingdom through a branch or agency,
 

of the whole or part of the trade to a company resident in the United Kingdom (“company B”),
  - (b) company A disposes of an asset to company B in accordance with the scheme at a time when the 2 companies are members of the same group, and
  - (c) a claim in relation to the asset is made by the 2 companies within 2 years after the end of the accounting period of company B during which the disposal is made.
- (2) Where this subsection applies—
  - (a) company A and company B shall be treated as if the asset were acquired by company B for a consideration of such amount as would secure that neither a gain nor a loss would accrue to company A on the disposal, and
  - (b) section 25(3) shall not apply to the asset by reason of the transfer.
- (3) Subsection (2) above does not apply where—
  - (a) company B, though resident in the United Kingdom,—
    - (i) is regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom, and

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- (ii) by virtue of the arrangements would not be liable in the United Kingdom to tax on a gain arising on a disposal of the asset occurring immediately after its acquisition, or
  - (b) company B is either a dual resident investing company or an investment trust.
- (4) Subsection (2) above shall not apply unless any gain accruing to company A—
  - (a) on the disposal of the asset in accordance with the scheme, or
  - (b) where that disposal occurs after the transfer has taken place, on a disposal of the asset immediately before the transfer,would be a chargeable gain and would, by virtue of section 10(3), form part of its profits for corporation tax purposes.
- (5) In this section “company” and “group” have the meanings which would be given by section 170 if subsections (2)(a) and (9) of that section were omitted.

### **173 Transfers within a group: trading stock**

- (1) Where a member of a group of companies acquires an asset as trading stock from another member of the group, and the asset did not form part of the trading stock of any trade carried on by the other member, the member acquiring it shall be treated for purposes of section 161 as having acquired the asset otherwise than as trading stock and immediately appropriated it for the purposes of the trade as trading stock.
- (2) Where a member of a group of companies disposes of an asset to another member of the group, and the asset formed part of the trading stock of a trade carried on by the member disposing of it but is acquired by the other member otherwise than as trading stock of a trade carried on by it, the member disposing of the asset shall be treated for purposes of section 161 as having immediately before the disposal appropriated the asset for some purpose other than the purpose of use as trading stock.

### **174 Disposal or acquisition outside a group**

- (1) Where there is a disposal of an asset acquired in relevant circumstances, section 41 shall apply in relation to capital allowances made to the person from which it was acquired (so far as not taken into account in relation to a disposal of the asset by that person), and so on as respects previous transfers of the asset in relevant circumstances.
- (2) In subsection (1) above “relevant circumstances” means circumstances in which section 171 or 172 applied or in which section 171 would have applied but for subsection (2) of that section.
- (3) Subsection (1) above shall not be taken as affecting the consideration for which an asset is deemed under section 171 or 172 to be acquired.
- (4) Schedule 2 shall apply in relation to a disposal of an asset by a company which is or has been a member of a group of companies, and which acquired the asset from another member of the group at a time when both were members of the group, as if all members of the group for the time being were the same person, and as if the acquisition or provision of the asset by the group, so taken as a single person, had been the acquisition or provision of it by the member disposing of it.
- (5) Subsection (4) above does not apply where the asset was acquired on a disposal within section 171(2)(c).

**175 Replacement of business assets by members of a group**

- (1) Subject to subsection (2) below, for the purposes of sections 152 to 158 all the trades carried on by members of a group of companies shall, for the purposes of corporation tax on chargeable gains, be treated as a single trade (unless it is a case of one member of the group acquiring, or acquiring the interest in, the new assets from another or disposing of, or of the interest in, the old assets to another).
- (2) Subsection (1) above does not apply where so much of the consideration for the disposal of the old assets as is applied in acquiring the new assets or the interest in them is so applied by a member of the group which is a dual resident investing company or a company which, though resident in the United Kingdom—
  - (a) is regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom, and
  - (b) by virtue of the arrangements would not be liable in the United Kingdom to tax on a gain arising on a disposal of, or of the interest in, the new assets occurring immediately after the acquisition;and in this subsection “the old assets” and “the new assets” have the same meanings as in section 152.
- (3) Section 154(2) shall apply where the company making the claim is a member of a group of companies as if all members of the group for the time being were the same person (and, in accordance with subsection (1) above, as if all trades carried on by members were the same trade) and so that the gain shall accrue to the member of the group holding the asset concerned on the occurrence of the event mentioned in section 154(2).
- (4) Subsection (2) above shall apply where the acquisition took place before 20th March 1990 and the disposal takes place within the period of 12 months beginning with the date of the acquisition or such longer period as the Board may by notice allow with the omission of the words from “or a company” to “the acquisition”.