Finance Act 1998

1998 CHAPTER 36

PART III

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER II

TAXATION OF CHARGEABLE GAINS

Groups of companies etc.

133 Transfer within group to investment trust.

(1) After section 101 of the [M1]Taxation of Chargeable Gains Act 1992, there shall be inserted the following section—

"**101A Transfer within group to investment trust.**

(1) This section applies where—

(a) an asset has been disposed of to a company (the "acquiring company") and the disposal has been treated by virtue of section 171(1) as giving rise to neither a gain nor a loss,

(b) at the time of the disposal the acquiring company was not an investment trust, and

(c) the conditions set out in subsection (2) below are satisfied by the acquiring company.

(2) Those conditions are satisfied by the acquiring company if—

(a) it becomes an investment trust for an accounting period beginning not more than 6 years after the time of the disposal,

(b) at the beginning of that accounting period, it owns, otherwise than as trading stock—

(i) the asset, or

(ii) property to which a chargeable gain has been carried forward from the asset on a replacement of business assets,

(c) it has not been an investment trust for any earlier accounting period beginning after the time of the disposal, and

(d) at the time at which it becomes an investment trust, there has not been an event by virtue of which it falls by virtue of section 179(3) or 101C(3) to be treated as having sold, and immediately reacquired, the asset at the time specified in subsection (3) below.

(3) The acquiring company shall be treated for all the purposes of this Act as if immediately after the disposal it had sold, and immediately reacquired, the asset at its market value at that time.

(4) Any chargeable gain or allowable loss which, apart from this subsection, would accrue to the acquiring company on the sale referred to in subsection (3) above shall be treated as accruing to it immediately before the end of the last accounting period to end before the beginning of the accounting period for which the acquiring company becomes an investment trust.

(5) For the purposes of this section a chargeable gain is carried forward from an asset to other property on a replacement of business assets if—

(a) by one or more claims under sections 152 to 158, the chargeable gain accruing on a disposal of the asset is reduced, and

(b) as a result an amount falls to be deducted from the expenditure allowable in computing a gain accruing on the disposal of the other property.

(6) For the purposes of this section an asset acquired by the acquiring company shall be treated as the same as an asset owned by it at a later time if the value of the second asset is derived in whole or in part from the first asset; and, in particular, assets shall be so treated where—

(a) the second asset is a freehold and the first asset was a leasehold; and

(b) the lessee has acquired the reversion.

(7) Where under this section a company is to be treated as having disposed of and reacquired an asset—

(a) all such recomputations of liability in respect of other disposals, and

(b) all such adjustments of tax, whether by way of assessment or by way of discharge or repayment of tax,

as may be required in consequence of the provisions of this section shall be carried out.

(8) Notwithstanding any limitation on the time for making assessments, any assessment to corporation tax chargeable in consequence of this section may be made at any time within 6 years after the end of the accounting period referred to in subsection (2)(a) above."

(2) In section 179 of that Act (company ceasing to be a member of a group), after subsection (2B) there shall be inserted the following subsection—

"(2C) This section shall not have effect as respects any asset if, before the time when the chargeable company ceases to be a member of the group or, as the case may be, the second group, an event has already occurred by virtue of which

the company falls by virtue of section 101A(3) to be treated as having sold and immediately reacquired the asset at the time specified in subsection (3) below."

(3) Subsections (1) and (2) above apply to any company which becomes an investment trust for an accounting period beginning on or after 17th March 1998.

Marginal Citations
M1 1992 c. 12.

134 Transfer of company's assets to venture capital trust.

(1) In subsection (4) of section 139 of the [M2]Taxation of Chargeable Gains Act 1992 (reconstruction or amalgamation involving transfer of a business), after "investment trust" there shall be inserted " or a venture capital trust. "

(2) After the section 101A of that Act inserted by section 133 above there shall be inserted the following section—

"**101B Transfer of company's assets to venture capital trust.**

(1) Where section 139 has applied on the transfer of a company's business (in whole or in part) to a company which at the time of the transfer was not a venture capital trust, then if—

(a) at any time after the transfer the company becomes a venture capital trust by virtue of an approval for the purposes of section 842AA of the Taxes Act; and

(b) at the time as from which the approval has effect the company still owns any of the assets of the business transferred,

the company shall be treated for all the purposes of this Act as if immediately after the transfer it had sold, and immediately reacquired, the assets referred to in paragraph (b) above at their market value at that time.

(2) Any chargeable gain or allowable loss which, apart from this subsection, would accrue to the company on the sale referred to in subsection (1) above shall be treated as accruing to the company immediately before the time mentioned in subsection (1)(b) above.

(3) This section does not apply if at the time mentioned in subsection (1)(b) above there has been an event by virtue of which the company falls by virtue of section 101(1) to be treated as having sold, and immediately reacquired, the assets immediately after the transfer referred to in subsection (1) above.

(4) Notwithstanding any limitation on the time for making assessments, any assessment to corporation tax chargeable in consequence of this section may, in a case in which the approval mentioned in subsection (1)(a) above has effect as from the beginning of an accounting period, be made at any time within 6 years after the end of that accounting period.

(5) Where under this section a company is to be treated as having disposed of, and reacquired, an asset of a business, all such recomputations of liability in respect of other disposals and all such adjustments of tax, whether by way of

assessment or by way of discharge or repayment of tax, as may be required in consequence of the provisions of this section shall be carried out."

(3) After subsection (1A) of section 101 of that Act there shall be inserted the following subsection—

"(1B) This section does not apply if at the time at which the company becomes an investment trust there has been an event by virtue of which it falls by virtue of section 101B(1) to be treated as having sold, and immediately reacquired, the assets immediately after the transfer referred to in subsection (1) above."

(4) Subsection (1) above applies to transfers made on or after 17th March 1998.

(5) Subsections (2) and (3) above apply to a company in respect of which an approval for the purposes of **[**F1Part 6 of the Income Tax Act 2007**]** (venture capital trusts) has effect as from a time falling on or after 17th March 1998.

Textual Amendments

F1 Words in s. 134(5) substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 382** (with Sch. 2)

Marginal Citations

M2 1992 c. 12.

135 Transfer within group to venture capital trust.

(1) In section 171 of the M3Taxation of Chargeable Gains Act 1992 (transfers within a group), after the word "or" at the end of paragraph (c) of subsection (2) there shall be inserted the following paragraph—

"(cc) a disposal by or to a venture capital trust; or"

(2) After the section 101B of that Act inserted by section 134 above there shall be inserted the following section—

"101C Transfer within group to venture capital trust.

(1) This section applies where—

(a) an asset has been disposed of to a company (the "acquiring company") and the disposal has been treated by virtue of section 171(1) as giving rise to neither a gain nor a loss,

(b) at the time of the disposal the acquiring company was not a venture capital trust, and

(c) the conditions set out in subsection (2) below are satisfied by the acquiring company.

(2) Those conditions are satisfied by the acquiring company if—

(a) it becomes a venture capital trust by virtue of an approval having effect as from a time (the "time of approval") not more than 6 years after the time of the disposal,

(b) at the time of approval the company owns, otherwise than as trading stock—

(i) the asset, or

(ii) property to which a chargeable gain has been carried forward from the asset on a replacement of business assets,

(c) it has not been a venture capital trust at any earlier time since the time of the disposal, and

(d) at the time of approval, there has not been an event by virtue of which it falls by virtue of section 179(3) or 101A(3) to be treated as having sold, and immediately reacquired, the asset at the time specified in subsection (3) below.

(3) The acquiring company shall be treated for all the purposes of this Act as if immediately after the disposal it had sold, and immediately reacquired, the asset at its market value at that time.

(4) Any chargeable gain or allowable loss which, apart from this subsection, would accrue to the acquiring company on the sale referred to in subsection (3) above shall be treated as accruing to it immediately before the time of approval.

(5) Subsections (5) to (7) of section 101A apply for the purposes of this section as they apply for the purposes of that section.

(6) Notwithstanding any limitation on the time for making assessments, any assessment to corporation tax chargeable in consequence of this section may, in a case in which the time of approval is the time at which an accounting period of the company begins, be made at any time within 6 years after the end of that accounting period.

(7) Any reference in this section to an approval is a reference to an approval for the purposes of section 842AA of the Taxes Act."

(3) In section 179 of that Act (company ceasing to be a member of a group), after the subsection (2C) inserted by section 133 above there shall be inserted the following subsection—

"(2D) This section shall not have effect as respects any asset if, before the time when the chargeable company ceases to be a member of the group or, as the case may be, the second group, an event has already occurred by virtue of which the company falls by virtue of section 101C(3) to be treated as having sold and immediately reacquired the asset at the time specified in subsection (3) below."

(4) Subsection (1) above applies to disposals made on or after 17th March 1998.

(5) Subsections (2) and (3) above apply to a company in respect of which an approval for the purposes of **[**[F2]Part 6 of the Income Tax Act 2007**]** (venture capital trusts) has effect as from a time falling on or after 17th March 1998.

Textual Amendments

F2 Words in s. 135(5) substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 383** (with Sch. 2)

Marginal Citations
M3 1992 c. 12.

136 Incorporated friendly societies.

(1) In section 170(9) of the [M4]Taxation of Chargeable Gains Act 1992 (meaning of "company" in sections 170 to 181), after the word "and" at the end of paragraph (c) there shall be inserted the following paragraph—

"(cc) an incorporated friendly society within the meaning of the [M5]Friendly Societies Act 1992; and".

(2) In subsection (2) of section 171 of that Act (transfers within a group), after the word "or" at the end of the paragraph (cc) inserted by section 135 above there shall be inserted the following paragraph—

"(cd) a disposal by or to a qualifying friendly society; or"

(3) After subsection (4) of that section there shall be inserted the following subsection—

"(5) In subsection (2)(cd) above "qualifying friendly society" means a company which is a qualifying society for the purposes of section 461B of the Taxes Act (incorporated friendly societies entitled to exemption from income tax and corporation tax on certain profits)."

(4) Subsection (1) above applies for the purpose of determining, in relation to times on and after 17th March 1998, whether a friendly society is a company within the meaning of the provisions of sections 170 to 181 of the [M6]Taxation of Chargeable Gains Act 1992.

(5) Subsections (2) and (3) above apply in relation to disposals made on or after 17th March 1998.

Marginal Citations
M4 1992 c. 12.
M5 1992 c. 40.
M6 1992 c. 12.

137 Pre-entry gains.

[F3](1) . . . . . .

[F4](2) . . . . . .

(3) In subsection (3) of section 213 of that Act (carry back of losses in respect of deemed annual disposal by insurance companies)—

(a) at the beginning there shall be inserted "Subject to subsection (3A) below,"; and

(b) for the "and" at the end of paragraph (c) there shall be substituted—

"(ca) none of the intervening accounting periods is an accounting period in which the company joined a group of companies, and".

[F5](4) . . . . . .

F6(5) . . . . . .

(6) Subsection (3) above has effect in relation to any intervening period ending on or after 17th March 1998.

F7(7) . . . . . .

Textual Amendments

F3 S. 137(1) repealed (with effect in accordance with Sch. 26 Pt. 3(9) Note 1 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 26 Pt. 3(9)**

F4 S. 137(2) repealed (with effect in accordance with Sch. 26 Pt. 3(9) Note 1 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 26 Pt. 3(9)**

F5 S. 137(4) repealed (with effect in accordance with Sch. 43 Pt. 3(12) Note 8 of the amending Act) by Finance Act 2003 (c. 14), **Sch. 43 Pt. 3(12)**

F6 S. 137(5) repealed (with effect in accordance with Sch. 26 Pt. 3(9) Note 1 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 26 Pt. 3(9)**

F7 S. 137(7) repealed (with effect in accordance with Sch. 43 Pt. 3(12) Note 8 of the amending Act) by Finance Act 2003 (c. 14), **Sch. 43 Pt. 3(12)**

F8138 Pre-entry losses.

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Textual Amendments

F8 S. 138 repealed (with effect in accordance with Sch. 11 paras. 11, 12 of the amending Act) by Finance Act 2011 (c. 11), **Sch. 11 para. 10(b)**

139 De-grouping charges.

(1) In section 179(2B) of the M7Taxation of Chargeable Gains Act 1992 (cases where there is a connection between groups successively left by a company)—

(a) in paragraph (b), for the words from “company which" to “its" there shall be substituted “ person or persons who control the company mentioned in paragraph (a) above or who have had it under their ”;

(b) in paragraph (c), for the words from “company which has" to “its" there shall be substituted “ person or persons who have, at any time in that period, had under their ”; and

(c) in that paragraph, for “fallen", wherever it occurs, there shall be substituted “ been a person falling ”.

(2) Subsection (1) above has effect in relation to a company in any case in which the time of the company’s ceasing to be a member of the second group is on or after 17th March 1998.

Marginal Citations

M7 1992 c. 12.

Changes to legislation:
There are currently no known outstanding effects for the Finance Act 1998, Cross Heading: Groups of companies etc..