



Finance Act 2004

2004 CHAPTER 12

PART 3

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 5

ENTERPRISE INCENTIVES

96 Enterprise management incentives: subsidiaries

- (1) Schedule 5 to the Income Tax (Earnings and Pensions) Act 2003 (enterprise management incentives) is amended as follows.
- (2) In paragraph 8 (qualifying companies: introduction) after “having only qualifying subsidiaries (see paragraphs 10 and 11),” insert— “ property managing subsidiaries (see paragraphs 11A and 11B),”.
- (3) In paragraph 10 (the qualifying subsidiaries requirement) for sub-paragraph (2) substitute—
 - “(2) In this paragraph “subsidiary” means any company which the company controls, either on its own or together with any person connected with it.
 - (3) For the purpose of sub-paragraph (2), the question whether a person controls a company is to be determined in accordance with section 416(2) to (6) of ICTA (“control” in the context of close companies).”
- (4) In paragraph 11 (meaning of “qualifying subsidiary”)—
 - (a) in sub-paragraph (2), omit paragraphs (a) to (c),
 - (b) before paragraph (d) of that sub-paragraph insert—
 - “(ca) that the subsidiary is a 51% subsidiary of the holding company;”,

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- (c) in paragraph (d) of that sub-paragraph, after “company” insert “ or another of its subsidiaries ”,
- (d) in paragraph (e) of that sub-paragraph, for “the conditions in paragraphs (a) to” substitute “ either of the conditions in paragraphs (ca) and ”,
- (e) omit sub-paragraph (3),
- (f) after sub-paragraph (7) insert—

“(8) Sub-paragraph (9) applies at a time when the subsidiary or another company is in administration or receivership.

(9) The subsidiary is not to be regarded, by reason only of anything done as a consequence of the company concerned being in administration or receivership, as having ceased to be a company in relation to which the conditions in sub-paragraph (2) are met if—

- (a) the entry into administration or receivership, and
- (b) everything done as a consequence of the company concerned being in administration or receivership,

is for commercial reasons and is not part of a scheme or arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax.

(10) Section 312(2A) of ICTA (meaning of being in administration or receivership) applies for the purposes of sub-paragraphs (8) and (9) as it applies for the purposes of Chapter 3 of Part 7 of ICTA (enterprise investment scheme).”.

(5) After paragraph 11 insert—

11A “The property managing subsidiaries requirement

- (1) A company is not a qualifying company if it has a property managing subsidiary which is not a qualifying 90% subsidiary of the company (see paragraph 11B).
- (2) “Property managing subsidiary” means a qualifying subsidiary of a company whose business consists wholly or mainly in the holding or managing of land or any property deriving its value from land.
- (3) In sub-paragraph (2) “land” and “property deriving its value from land” have the same meaning as in section 776 of ICTA.

11B Meaning of “qualifying 90% subsidiary”

- (1) A company (“the subsidiary”) is a qualifying 90% subsidiary of a company (“the holding company”) if the following conditions are met.
- (2) The conditions are—
 - (a) that the holding company possesses not less than 90% of the issued share capital of, and not less than 90% of the voting power in, the subsidiary;
 - (b) that the holding company would—
 - (i) in the event of a winding up of the subsidiary, or
 - (ii) in any other circumstances,

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- be beneficially entitled to not less than 90% of the assets of the subsidiary which would then be available for distribution to the shareholders of the subsidiary;
- (c) that the holding company is beneficially entitled to not less than 90% of any profits of the subsidiary which are available for distribution to the shareholders of the subsidiary;
 - (d) that no person other than the holding company has control of the subsidiary; and
 - (e) that no arrangements are in existence by virtue of which any of the conditions in paragraphs (a) to (d) would cease to be met.
- (3) Sub-paragraphs (4) to (10) of paragraph 11 (but not sub-paragraph (6)(b)) apply in relation to the conditions in sub-paragraph (2) above as they apply in relation to the conditions in sub-paragraph (2) of that paragraph.”.
- (6) The amendments made by this section have effect in relation to any right to acquire shares granted on or after 17th March 2004.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 236ZA inserted by [S.I. 2024/357 art. 2\(2\)](#)