SCHEDULES

SCHEDULE 10

Section 45

COMPANY CEASING TO BE MEMBER OF GROUP

Degrouping

1 In section 139 of TCGA 1992 (reconstruction involving transfer of business), after subsection (1A) insert—

"(1B) Nothing in section 179(3D) prevents the two companies being treated as mentioned in subsection (1)."

2 In section 171A of TCGA 1992 (election to reallocate gain or loss to another member of the group), omit subsection (7).

3 (1) Section 179 of TCGA 1992 (company ceasing to be member of group) is amended as follows.

(2) In subsection (1)(a) for "company B is a member of a group" substitute " company A and company B are members of the same group ".

(3) In subsection (1A) omit the words from "For this purpose" to the end.

(4) For subsection (2) substitute—

"(2) Where two companies cease to be members of the group at the same time, subsection (1) does not have effect as respects the acquisition of an asset by one of the companies from the other if condition A or B is met.

(2ZA) Condition A is that the companies—

(a) are both 75 per cent subsidiaries and effective 51 per cent subsidiaries of another company on the date of the acquisition, and

(b) remain both 75 per cent subsidiaries and effective 51 per cent subsidiaries of that other company until immediately after they cease to be members of the group.

(2ZB) Condition B is that one of the companies—

(a) is both a 75 per cent subsidiary and an effective 51 per cent subsidiary of the other on the date of the acquisition, and

(b) remains both a 75 per cent subsidiary and an effective 51 per cent subsidiary of the other until immediately after the companies cease to be members of the group."

(5) For subsection (2A)(a) substitute—

"(a) a company ("company A") acquired an asset from another company ("company B") at a time when both company A and company B were members of the same group ("the first group"),

(aa) company A has ceased to be a member of the first group,".

(6) After subsection (3) insert—

"(3A) Any chargeable gain or allowable loss which would otherwise accrue to company A on the sale referred to in subsection (3) does not so accrue if—

(a) company A ceases to be a member of the group in consequence of—

(i) a disposal of shares in company A or another member of the group made by a member of the group, or

(ii) two or more such disposals,

(b) either—

(i) subsection (3B) applies to the disposal or, if there is more than one disposal, to at least one of them, or

(ii) sub-paragraph (i) does not apply but had subsection (3B) applied to the disposal or, if there is more than one disposal, to each of them, any gain arising on the disposal or disposals would not have been a chargeable gain by virtue of Schedule 7AC, and

(c) in the absence of this subsection, section 535 of CTA 2010 (UK REITS: exemption of gains) would not apply to the chargeable gain or allowable loss which would accrue to company A on the sale.

(3B) This subsection applies to a disposal of shares if—

(a) the company making the disposal is resident in the United Kingdom at the time of the disposal,

(b) the shares are chargeable assets in relation to that company immediately before that time, or

(c) any part of the chargeable gain or allowable loss accruing on the disposal is treated as a gain or loss accruing to a person by virtue of section 13(2) (attribution of gains to members of non-resident companies).

In this section "group disposal" means a disposal within subsection (3A)(a) to which this subsection applies and the company making the disposal is referred to as "the transferor company".

(3C) For the purposes of subsections (3A) and (3B), the question whether there is a disposal is to be determined ignoring section 127 (share reorganisations etc treated as not involving disposal).

(3D) If subsection (3A) applies, any chargeable gain or allowable loss accruing to the transferor company on a group disposal (other than a group disposal to which section 127 applies) is to be calculated—

(a) where a chargeable gain would accrue to company A in the absence of subsection (3A), as if the amount of the consideration for the group disposal were increased by the amount of the gain, and

(b) where an allowable loss would accrue to company A in the absence of subsection (3A), as if an amount equal to the amount of the loss were a sum allowable under section 38 as a deduction in the computation of the gain or loss accruing on the group disposal.

(3E) If subsection (3A) applies, and section 127 applies to a group disposal, any chargeable gain or allowable loss accruing to the transferor company on a disposal of the new holding arising from the group disposal (or any part of that holding) is to be calculated—

(a) where a chargeable gain would accrue to company A in the absence of subsection (3A)—

(i) as if an amount equal to the amount of the gain were excluded from the expenditure allowable as a deduction under section 38 in the computation of the gain or loss accruing on the disposal (but not so as to reduce that expenditure below nil), and

(ii) where (ignoring sub-paragraph (i)) the amount of the gain exceeds the expenditure allowable as such a deduction, as if a gain equal to that excess accrued on the disposal of the new holding (or, if the disposal is of a part of the new holding, a gain equal to the corresponding part of that excess accrued on that disposal), in addition to any gain or loss that actually accrues on the disposal of the new holding or part, and

(b) where an allowable loss would accrue to company A in the absence of subsection (3A), as if an amount equal to the amount of the loss were a sum allowable under section 38 as a deduction in the computation of the gain or loss accruing on the disposal.

In this subsection "new holding" has the meaning given by section 126.

(3F) If there is more than one group disposal, the references in subsections (3D) and (3E) to the amount of the gain or loss which would accrue to company A in the absence of subsection (3A) are to be read, in relation to each disposal, as references to—

(a) such proportion of that amount as the transferor companies in relation to the group disposals jointly elect as the appropriate proportion in relation to the disposal in question, or

(b) where no election is made, the proportion of that amount attributable to that disposal if that amount is divided equally between the group disposals.

(3G) An election under subsection (3F) must—

(a) specify the appropriate proportion in relation to each group disposal, and

(b) be made, by notice to an officer of Revenue and Customs, no later than 2 years after the end of the first accounting period of a company in which any chargeable gain or allowable loss on a group disposal accrues.

(3H) If a group disposal by a company consists of shares of more than one class, then, for the purposes of subsections (3D) and (3E), the company may apportion any increase or deduction to be made between the classes of shares in such manner as it considers appropriate."

(7) For subsection (5) substitute—

"(5) Subsections (6) to (8) apply where—

(a) in the absence of subsection (6), company A would be treated by virtue of subsection (3) as selling an asset at any time, by reason of ceasing to be a member of the group, and

(b) company A ceases to be a member of the group by reason only of the fact that the principal company of that group becomes a member of another group."

(8) In subsection (6)—

(a) for "The company" to "but" substitute " Subsection (3) does not apply to treat company A as selling the asset at that time; but ", and

(b) for "the company in question" (in each place) substitute " company A ".

(9) In subsection (7) for "the company" (in both places) substitute " company A ".

(10) After that subsection insert—

"(7A) Any chargeable gain or allowable loss which would otherwise accrue to company A on the sale referred to in subsection (6) does not so accrue if—

(a) company A ceases at the relevant time to satisfy the conditions in subsection (7) in consequence of—

(i) a disposal of shares in company A, or another member of the other group mentioned in subsection (5)(b), made by a member of that other group, or

(ii) two or more such disposals,

(b) either—

(i) subsection (3B) applies to the disposal or, if there is more than one disposal, to at least one of them, or

(ii) sub-paragraph (i) does not apply but had subsection (3B) applied to the disposal or, if there is more than one disposal, to each of them, any gain arising on the disposal or disposals would not have been a chargeable gain by virtue of Schedule 7AC, and

(c) in the absence of this subsection, section 535 of CTA 2010 (UK REITS: exemption of gains) would not apply to the chargeable gain or allowable loss which would accrue to company A on the sale.

(7B) Where subsection (7A) applies, subsections (3C) to (3H) apply to the calculation of any chargeable gain or allowable loss accruing on a disposal within subsection (7A)(a) to which subsection (3B) applies (a "relevant disposal") with the following modifications—

(a) in subsections (3C) to (3H) for the references to a group disposal substitute references to a relevant disposal, and

(b) in subsections (3C), (3D) and (3E) for the references to subsection (3A) substitute references to subsection (7A)."

(11) In subsection (8) for the words from "the company" to the end substitute " company A on the sale referred to in subsection (6) is to be treated as accruing immediately before the relevant time. "

(12) In subsection (10), for paragraph (a) substitute—

"(a) two companies are associated with each other if one is a 75 per cent subsidiary of the other or both are 75 per cent subsidiaries of another company."

(13) After that subsection insert—

"(10A) For the purposes of this section an asset is a "chargeable asset" in relation to a company at any time if any gain accruing to the company on a disposal of the asset by the company at that time—

(a) would be a chargeable gain and would by virtue of section 10B form part of its chargeable profits for corporation tax purposes, or

(b) would, but for Schedule 7AC (exemptions for disposals by companies with substantial shareholdings), be within paragraph (a)."

4 After section 179 of TCGA 1992 insert—

"**179ZA Claim for adjustment of calculations under section 179**

(1) This section applies where—

(a) a gain accrues to a company ("company A") on a sale referred to in subsection (3) or (6) of section 179, or

(b) a gain would so accrue but for subsection (3A) or (7A) of that section.

(2) If subsection (3D) or (3E) of that section applies in relation to one or more group disposals (within the meaning of that section)—

(a) the company making the disposal, or

(b) if there is more than one disposal, the companies making those disposals acting jointly,

may make a claim for the amount of the gain to be treated for the purposes of the subsection in question as reduced by an amount specified in the claim.

(3) In any other case, company A may make a claim for the amount of the gain to be treated for all purposes of this Act as reduced by an amount specified in the claim.

(4) Where a claim is made under subsection (2) or (3), the gain must be treated, for the purposes mentioned in the subsection in question, as reduced by such amount (if any) as is just and reasonable.

(5) In determining the amount which is just and reasonable regard must be had, in particular, to any transaction as a direct or indirect result of which company A or any associated company (within the meaning of section 179(10)) acquired the asset to which the gain relates.

(6) Where under this section the gain accruing to company A on a sale referred to in subsection (3) or (6) of section 179 is treated as reduced by an amount ("the permitted deduction"), the subsection in question has effect, so far as it provides for the immediate reacquisition of the asset by company A, as if the reference to market value of the asset were to its market value less the permitted deduction."

5 In TCGA 1992, the following provisions are repealed—

(a) section 179A (reallocation within group of gain or loss accruing under section 179);

(b) section 179B (roll-over of degrouping charge on business assets);

(c) Schedule 7AB (roll-over of degrouping charge: modification of enactments).

Substantial shareholding exemption

6 (1) Schedule 7AC to TCGA 1992 (exemptions for disposals by companies with substantial shareholdings) is amended as follows.

(2) After paragraph 15 insert—

"Effect of transfer of trading assets within a group

15A (1) For the purposes of this Part, the period for which the investing company is treated as holding a substantial shareholding in the company invested in is extended in accordance with sub-paragraph (3) if the following conditions are met.

(2) The conditions are—

(a) that, immediately before the disposal, the investing company holds a substantial shareholding in the company invested in,

(b) that an asset which, at the time of the disposal, is being used for the purposes of a trade carried on by the company invested in was transferred to it by the investing company or another company,

(c) that, at the time of the transfer of the asset, the company invested in, the investing company and, if different, the company which transferred the asset were all members of the same group, and

(d) that the asset was previously used by a member of the group (other than the company invested in) for the purposes of a trade carried on by that member at a time when it was such a member.

(3) The investing company is to be treated as having held the substantial shareholding at any time during the final 12 month period when the asset was used as mentioned in sub-paragraph (2)(d) (if it did not hold a substantial shareholding at that time).

(4) "The final 12 month period" means the period of 12 months ending with the time of the disposal."

(3) In paragraph 19 (requirements relating to the company invested in), after sub-paragraph (2) insert—

"(2A) If the conditions in paragraph 15A(2)(b) to (d) are met, sub-paragraph (2B) applies for the purpose of determining whether the requirement of sub-paragraph (1)(a) is satisfied.

(2B) The company invested in is to be treated as having been a trading company at any time during the final 12 month period when the asset was used as mentioned in paragraph 15A(2)(d) (if it was not a trading company at that time).

(2C) "The final 12 month period" has the meaning given in paragraph 15A(4)."

Intangible fixed assets: degrouping

7 (1) Part 8 of CTA 2009 (intangible fixed assets) is amended as follows.

(2) In section 780 (deemed realisation and reacquisition at market value), in subsection (5)(b) before "associated" insert " certain ".

(3) In section 783 (associated companies leaving group at same time), for subsection (1) substitute—

"(1) Where two companies cease to be members of a group at the same time, section 780 does not apply in relation to a transfer by one of the companies to the other if condition A or B is met.

(1A) Condition A is that the companies—

(a) are both 75% subsidiaries and effective 51% subsidiaries of another company on the date of the transfer, and

(b) remain both 75% subsidiaries and effective 51% subsidiaries of that other company until immediately after they cease to be members of the group.

(1B) Condition B is that one of the companies—

(a) is both a 75% subsidiary and an effective 51% subsidiary of the other on the date of the transfer, and

(b) remains both a 75% subsidiary and an effective 51% subsidiary of the other until immediately after the companies cease to be members of the group.", and, in the section heading, for "*Associated*" substitute " *Certain associated* ".

(4) In section 788 (provisions supplementing provisions about degrouping), for subsection (3) substitute—

"(3) For the purposes of those sections and this section two companies are associated with each other if one is a 75% subsidiary of the other or both are 75% subsidiaries of another company."

Consequential repeals

8 In consequence of the repeals made by paragraph 5, the following are also repealed—

(a) in IHTA 1984, section 97(1)(a)(iii) and the "or" before it,

(b) in FA 2002, section 42(1) and (3)(a),

(c) in F(No.2)A 2005, in Schedule 4, paragraphs 8 and 10(3), and

(d) in FA 2009, in Schedule 12, paragraph 2.

Commencement

9 (1) The amendments made by paragraphs 1 to 5 and 8 have effect in relation to any disposal of an asset by one company ("company B") to another company ("company A") made at a time when company B is a member of a group, if—

(a) company A ceases to be a member of the group on or after the passing of this Act, or

(b) where company A ceased to be such a member before the passing of this Act in circumstances where section 179(6) to (8) of TCGA 1992 applied, company A ceases to satisfy the conditions in section 179(7) of that Act on or after the passing of this Act.

(2) The amendments made by paragraph 6 have effect in relation to disposals of shares made on or after the passing of this Act.

(3) The amendments made by paragraph 7 have effect in relation to any disposal of an asset by one company ("company B") to another company ("company A") made at a time when company B is a member of a group, if—

(a) company A ceases to be a member of the group on or after the passing of this Act, or

(b) where company A ceased to be such a member before the passing of this Act in circumstances where section 783 of CTA 2009 applied, company A ceases to be a member of another group on or after the passing of this Act.

(4) But where an early commencement election is made in relation to a group—

(a) sub-paragraphs (1) and (3) apply in relation to that group as if the references in those sub-paragraphs to the passing of this Act were references to 1 April 2011, and

(b) sub-paragraph (2) applies in relation to any disposal of shares by a member of that group as if the reference in that sub-paragraph to the passing of this Act were a reference to 1 April 2011.

(5) An early commencement election in relation to a group means an election made for the purposes of this paragraph by the principal company of the group.

(6) If a company ceases to be a member of a group in the period which begins with 1 April 2011 and ends with the passing of this Act, an early commencement election may be made or revoked in relation to the group only with the consent of that company contained in a notice which accompanies the election or revocation.

(7) Where an early commencement election is revoked, the election is treated as never having had effect.

(8) An early commencement election may not be made or revoked after 31 March 2012 (and paragraph 3(1)(b) of Schedule 1A to the Management Act (amendment of elections etc) does not apply in relation to an early commencement election).

Changes to legislation:
Finance Act 2011, SCHEDULE 10 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.
View outstanding changes

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):

- Sch. 23 para. 45(1)(ia) inserted by 2017 c. 10 Sch. 11 para. 6(3)
- Sch. 23 para. 2(1A) inserted by S.I. 2019/397 reg. 2(2) (This amendment not applied to legislation.gvo.uk. Amending Regulations revoked on IP completion day by S.I. 2020/1544, regs. 1, 8; S.I. 2020/1641, reg. 2, Sch.)
- Sch. 23 para. 15A inserted by S.I. 2019/397 reg. 2(3) (This amendment not applied to legislation.gvo.uk. Amending Regulations revoked on IP completion day by S.I. 2020/1544, regs. 1, 8; S.I. 2020/1641, reg. 2, Sch.)