

*Status: Point in time view as at 13/10/1993.*

*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 1992, SCHEDULE 6. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 6

Section 24.

#### GROUP RELIEF ETC: AMENDMENTS

##### *Main amendments*

1 In Schedule 18 to the Taxes Act 1988 (group relief: equity holders and profits or assets available for distribution) the following paragraph shall be substituted for paragraph 5(5)—

“5A (1) In a case where paragraphs 4 and 5 above apply, each of the following percentages, namely—

- (a) the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 2(1) above would be entitled, and
- (b) the percentage of assets to which, on the notional winding-up, the first company referred to in paragraph 3(1) above would be entitled,

shall be determined on each of the different bases set out in subparagraph (2) below.

(2) The bases are—

- (a) the basis specified in paragraph 4(2) above;
- (b) the basis specified in paragraph 5(2) above;
- (c) the basis specified in paragraph 4(2) above and the basis specified in paragraph 5(2) above taken together;
- (d) the basis specified in paragraph 2(1) or 3(1) above (according to the percentage concerned) without regard to paragraphs 4(2) and 5(2) above.

(3) The lowest of the four percentages of profits so determined shall be taken for the purposes of section 413(7) to (9) to be the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 2(1) above would be entitled as mentioned in that paragraph.

(4) The lowest of the four percentages of assets so determined shall be taken for the purposes of section 413(7) to (9) to be the percentage to which, on the notional winding-up, the first company mentioned in paragraph 3(1) above would be entitled of any assets of the other company available for distribution to its equity holders on a winding-up.”

2 In that Schedule the following paragraphs shall be inserted after paragraph 5A—

“5B (1) This paragraph applies if, at any time in the relevant accounting period, option arrangements exist; and option arrangements are arrangements of any kind (whether in writing or not) as regards which the two conditions set out below are fulfilled.

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- (2) The first condition is that the arrangements are ones by virtue of which there could be a variation in—
  - (a) the percentage of profits to which any of the equity holders is entitled on the profit distribution, or
  - (b) the percentage of assets to which any of the equity holders is entitled on the notional winding-up.
- (3) The second condition is that, under the arrangements, the variation could result from the exercise of any of the following rights (option rights)—
  - (a) a right to acquire shares or securities in the second company referred to in paragraphs 2(1) and 3(1) above;
  - (b) a right to require a person to acquire shares or securities in that company.
- (4) For the purposes of sub-paragraph (3) above—
  - (a) it is immaterial whether or not the shares or securities were issued before the arrangements came into existence;
  - (b) “shares” does not include fixed-rate preference shares;
  - (c) “securities” does not include normal commercial loans (within the meaning given by paragraph 1(5) above);
  - (d) “right” does not include a right of an individual to acquire shares, if the right was obtained by reason of his office or employment as a director or employee of the company and in accordance with the provisions of a share option scheme approved under Schedule 9 at the time it was obtained.
- (5) As regards each point in time when option arrangements exist in the relevant accounting period—
  - (a) there shall be taken each possible state of affairs that could then subsist if the outstanding option rights, or any of them or any combination of them, became effective at that point, and
  - (b) taking each such state of affairs, it shall be assumed that the rights and duties of the equity holders in the relevant accounting period were to be found accordingly.
- (6) The following rules shall have effect—
  - (a) for the purposes of sub-paragraph (5) above outstanding option rights are all such option rights under the arrangements (or sets of arrangements if more than one) as exist at the point in time concerned but have not become effective at or before that point;
  - (b) for the purpose of applying sub-paragraph (5) above it is immaterial whether or not the rights are exercisable at or before the point in time concerned and it is immaterial whether or not they are capable of becoming effective at or before that point;
  - (c) for the purposes of sub-paragraph (5) above and this sub-paragraph an option right becomes effective when the shares or securities to which it relates are acquired in pursuance of it.
- (7) The determination mentioned in sub-paragraph (8) below shall be made as regards each point in time when option arrangements exist in the relevant accounting period; and for each such point in time a separate

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determination shall be made for each of the possible states of affairs mentioned in sub-paragraph (5) above.

- (8) The determination is a determination of—
- (a) the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 2(1) above would be entitled, and
  - (b) the percentage of assets to which, on the notional winding-up, the first company referred to in paragraph 3(1) above would be entitled,

if the rights and duties of the equity holders in the relevant accounting period were found as mentioned in sub-paragraph (5) above.

- (9) Where different determinations yield different percentages of profits and different percentages of assets, only one determination of each percentage (yielding the lowest figure) shall be treated as having been made.

- (10) Sub-paragraphs (3) and (4) of paragraph 4 above shall apply for the purposes of this paragraph as they apply for the purposes of that paragraph and, accordingly, references there to sub-paragraphs (2)(a) and (2)(b) of that paragraph shall be construed as references to sub-paragraphs (8)(a) and (8)(b) of this paragraph.

- 5C (1) In a case where paragraphs 4 and 5B above apply, each of the following percentages, namely—
- (a) the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 2(1) above would be entitled, and
  - (b) the percentage of assets to which, on the notional winding-up, the first company referred to in paragraph 3(1) above would be entitled,

shall be determined on each of the different bases set out in sub-paragraph (2) below.

- (2) The bases are—
- (a) the basis specified in paragraph 4(2) above;
  - (b) the basis specified in paragraph 5B(8) above;
  - (c) the basis specified in paragraph 4(2) above and the basis specified in paragraph 5B(8) above taken together;
  - (d) the basis specified in paragraph 2(1) or 3(1) above (according to the percentage concerned) without regard to paragraphs 4(2) and 5B(8) above.

- (3) The lowest of the four percentages of profits so determined shall be taken for the purposes of section 413(7) to (9) to be the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 2(1) above would be entitled as mentioned in that paragraph.

- (4) The lowest of the four percentages of assets so determined shall be taken for the purposes of section 413(7) to (9) to be the percentage to which, on the notional winding-up, the first company mentioned in paragraph 3(1)

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above would be entitled of any assets of the other company available for distribution to its equity holders on a winding-up.

- (5) For the purposes of this paragraph the basis specified in paragraph 5B(8) above is such basis as gives the percentage of profits arrived at by virtue of paragraph 5B(9) above or (as the case may be) such basis as gives the percentage of assets arrived at by virtue of paragraph 5B(9) above.
- 5D (1) In a case where paragraphs 5 and 5B above apply, each of the following percentages, namely—
- (a) the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 2(1) above would be entitled, and
  - (b) the percentage of assets to which, on the notional winding-up, the first company referred to in paragraph 3(1) above would be entitled,
- shall be determined on each of the different bases set out in subparagraph (2) below.
- (2) The bases are—
- (a) the basis specified in paragraph 5(2) above;
  - (b) the basis specified in paragraph 5B(8) above;
  - (c) the basis specified in paragraph 5(2) above and the basis specified in paragraph 5B(8) above taken together;
  - (d) the basis specified in paragraph 2(1) or 3(1) above (according to the percentage concerned) without regard to paragraphs 5(2) and 5B(8) above.
- (3) The lowest of the four percentages of profits so determined shall be taken for the purposes of section 413(7) to (9) to be the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 2(1) above would be entitled as mentioned in that paragraph.
- (4) The lowest of the four percentages of assets so determined shall be taken for the purposes of section 413(7) to (9) to be the percentage to which, on the notional winding-up, the first company mentioned in paragraph 3(1) above would be entitled of any assets of the other company available for distribution to its equity holders on a winding-up.
- (5) For the purposes of this paragraph the basis specified in paragraph 5B(8) above is such basis as gives the percentage of profits arrived at by virtue of paragraph 5B(9) above or (as the case may be) such basis as gives the percentage of assets arrived at by virtue of paragraph 5B(9) above.
- 5E (1) In a case where paragraphs 4 and 5 and 5B above apply, each of the following percentages, namely—
- (a) the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 2(1) above would be entitled, and
  - (b) the percentage of assets to which, on the notional winding-up, the first company referred to in paragraph 3(1) above would be entitled,
- shall be determined on each of the different bases set out in subparagraph (2) below.

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- (2) The bases are—
- (a) the basis specified in paragraph 4(2) above;
  - (b) the basis specified in paragraph 5(2) above;
  - (c) the basis specified in paragraph 5B(8) above;
  - (d) the basis specified in paragraph 4(2) above and the basis specified in paragraph 5(2) above taken together;
  - (e) the basis specified in paragraph 4(2) above and the basis specified in paragraph 5B(8) above taken together;
  - (f) the basis specified in paragraph 5(2) above and the basis specified in paragraph 5B(8) above taken together;
  - (g) the basis specified in paragraph 4(2) above and the basis specified in paragraph 5(2) above and the basis specified in paragraph 5B(8) above all taken together;
  - (h) the basis specified in paragraph 2(1) or 3(1) above (according to the percentage concerned) without regard to paragraphs 4(2), 5(2) and 5B(8) above.
- (3) The lowest of the eight percentages of profits so determined shall be taken for the purposes of section 413(7) to (9) to be the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 2(1) above would be entitled as mentioned in that paragraph.
- (4) The lowest of the eight percentages of assets so determined shall be taken for the purposes of section 413(7) to (9) to be the percentage to which, on the notional winding-up, the first company mentioned in paragraph 3(1) above would be entitled of any assets of the other company available for distribution to its equity holders on a winding-up.
- (5) For the purposes of this paragraph the basis specified in paragraph 5B(8) above is such basis as gives the percentage of profits arrived at by virtue of paragraph 5B(9) above or (as the case may be) such basis as gives the percentage of assets arrived at by virtue of paragraph 5B(9) above.”

#### *Other amendments*

- 3 In paragraph 6 of that Schedule for “5” there shall be substituted “ 5E ”.
- 4 In section 272 of the <sup>M1</sup>Income and Corporation Taxes Act 1970 (groups of companies: definitions) in subsection (1F) (application of Schedule 18 but without paragraph 5(3) etc.) after “5(3)” there shall be inserted “ and 5B to 5E ”.

#### **Marginal Citations**

**M1** 1970 c. 10.

- 5 In section 170 of the <sup>M2</sup>Taxation of Chargeable Gains Act 1992 (interpretation of sections 171 to 181) in subsection (8) (application of Schedule 18 but without paragraph 5(3) etc.) after “5(3)” there shall be inserted “ and 5B to 5E ”.

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**M2** 1992 c. 12.

*Application of amendments*

- 6 (1) Sub-paragraph (2) below shall apply where either of the following events occurs on or after 15th November 1991—
- (a) any shares or securities of the relevant company are issued in circumstances where they carry both rights referred to in paragraph 4(1) of Schedule 18 and rights referred to in paragraph 5(1) of Schedule 18;
  - (b) any shares or securities of the relevant company issued before 15th November 1991 begin to carry both rights referred to in paragraph 4(1) of Schedule 18 and rights referred to in paragraph 5(1) of Schedule 18 (whether or not they previously carried rights referred to in one of those paragraphs).
- (2) In such a case paragraph 1 above shall apply in relation to the accounting period in which the event occurs and subsequent accounting periods.
- (3) In this paragraph—
- (a) references to the relevant company are to the second company referred to in paragraphs 2(1) and 3(1) of Schedule 18;
  - (b) references to accounting periods are to accounting periods of that company.
- 7 Paragraph 2 above shall apply where the option arrangements are made on or after 15th November 1991.
- 8 Paragraph 3 above shall apply in accordance with paragraphs 6 and 7 above.
- 9 Subject to the repeals made by the <sup>M3</sup>Taxation of Chargeable Gains Act 1992, paragraph 4 above shall apply in accordance with paragraph 7 above.

**Marginal Citations**

**M3** 1992 c. 12.

- 10 The Taxation of Chargeable Gains Act 1992 shall have effect, and be deemed always to have had effect, with the amendment made by paragraph 5 above.

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