

SCHEDULES

SCHEDULE 9

Section 74.

CHARGEABLE GAINS: VALUE SHIFTING AND TAX-FREE BENEFITS

- 1 The Taxation of Chargeable Gains Act 1992 shall be amended as follows.
- 2 The following section shall be inserted after section 31 (value shifting: tax-free benefits from distributions within groups)—

“31A Asset-holding company leaving the group

- (1) This section applies where profits of a company would be profits arising on a transaction caught by section 31 but for the fact that the condition in section 31(8) is not satisfied.
- (2) The profits shall be treated as profits arising on a transaction caught by section 31 if—
 - (a) subsection (4) or (5) below is satisfied, and
 - (b) subsection (6) below is satisfied.
- (3) In the following provisions of this section—
 - “the asset-holding company” means, in relation to any particular time, the company which holds the asset with enhanced value at that time,
 - “the disposal group” means the group of companies of which the company which made the section 30 disposal was a member at the time of the disposal (or a group which, by virtue of section 170(10), is treated as the same as that group), and
 - “the six-year period” means the period of six years starting with the date of the section 30 disposal.
- (4) This subsection is satisfied if at any time during the six-year period an event occurs which consists in the asset-holding company ceasing to be a member of the disposal group otherwise than by reason of the fact that the principal company of that group becomes a member of another group.
- (5) This subsection is satisfied if—
 - (a) at any time during the six-year period the asset-holding company ceases to be a member of the disposal group by reason only of the fact that the principal company of that group becomes a member of another group, and
 - (b) at any time during that period an event occurs as a result of which there is no member of the disposal group of which the asset-holding company is a 75 per cent. subsidiary or there is no member of that group of which the asset-holding company is an effective 51 per cent. subsidiary.

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- (6) This subsection is satisfied if no disposal of the asset with enhanced value is treated as having occurred by virtue of section 179 during the period—
- (a) beginning with the time of the section 30 disposal, and
 - (b) ending immediately before the event referred to in subsection (4) or (5)(b) above.
- (7) Where section 30 has effect by virtue of this section in relation to a disposal—
- (a) a chargeable gain of the differential amount shall be treated as accruing to the chargeable company immediately before the event referred to in subsection (4) or (5)(b) above, and
 - (b) subsection (5) of section 30 shall not apply.
- (8) The “differential amount” is A minus B where—
- (a) A is the amount of the allowable loss or chargeable gain which would have accrued on the section 30 disposal if the consideration for the disposal had been increased in accordance with section 30(5),
 - (b) B is the amount of the allowable loss or chargeable gain which accrued on the section 30 disposal,
 - (c) an allowable loss is treated as a negative amount, and
 - (d) a negative result is treated as a result of nil.
- (9) The “chargeable company” is—
- (a) the company which made the section 30 disposal, or
 - (b) if that company is no longer a member of the disposal group immediately before the event referred to in subsection (4) or (5)(b) above, the principal company of that group.
- (10) A gain which is treated as accruing by virtue of subsection (7) above shall, for the purposes of section 18(3), be treated as a gain accruing on a disposal between the parties to the section 30 disposal made at a time when they are connected persons.”
- 3 (1) Section 33 (provisions supplementary to sections 30 to 32) shall be amended as follows.
- (2) After subsection (1) there shall be substituted—
- “(1A) For the purposes of section 31A, subsections (2) to (6) below apply for the purpose of determining any question in relation to the asset with enhanced value.”
- (3) In subsection (2), for “and 31(7)” there shall be substituted “, 31(7) and 31A(6)”.
- (4) In subsection (3) there shall be inserted at the beginning “For the purposes of sections 30(2) and 31(7) to (9),”
- (5) After subsection (3) there shall be inserted—
- “(3A) Subsections (3B) and (3C) below apply (instead of subsection (3) above) for the purposes of section 31A where one or more assets are treated by virtue of subsection (5) or (6) below as the same as the asset with enhanced value.

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(3B) If in the period beginning with the time of the transaction referred to in section 31(6) and ending immediately before the event referred to in section 31A(4) or (5)(b)—

- (a) there is no disposal of the asset with enhanced value to any person other than a disposal falling with section 171(1), and
- (b) no disposal of the asset with enhanced value is treated as having occurred by virtue of section 179,

then references to the asset with enhanced value are to the asset which is treated by virtue of subsection (5) or (6) below as the same as that asset or, as the case may be, all the assets so treated.

(3C) In any other case, references to the asset with enhanced value are to an asset or, as the case may be, all the assets representing that part of the value of the asset with enhanced value that remains after allowing for disposals of a kind mentioned in subsection (3B)(a) or (b).”

(6) In subsection (4)—

- (a) for “Where by virtue of subsection (3) above those references are to 2 or more assets” there shall be substituted “Where by virtue of subsection (3), (3B) or (3C) above references to an asset are taken as references to two or more assets”, and
- (b) in paragraph (c), for “the reference in section 31(8)” there shall be substituted “a reference in section 31(8) or 31A(3)”.

(7) After subsection (8) there shall be inserted—

“(8A) In a case where—

- (a) profits are treated as profits arising on a transaction caught by section 31 by virtue of section 31A, and
- (b) the condition in section 31(7) or a condition in section 31A is satisfied by reference to an asset, or assets treated as a single asset, treated by virtue of subsection (3C) above as the same as the asset with enhanced value,

the amount of the reduction in value of the principal asset shall be reduced to such amount as is just and reasonable.”

4 (1) Section 34 (transactions treated as a reorganisation of share capital) shall be amended as follows.

(2) After subsection (1) there shall be inserted—

“(1A) Subsection (1B) below applies where, but for sections 127 and 135(3), section 30 would have effect, by virtue of section 31A, as respects the disposal by a company (“the disposing company”) of an asset consisting of shares in or debentures of another company (“the original holding”) in exchange for shares in or debentures of a further company which, immediately after the disposal, is not a member of the same group as the disposing company.

(1B) Section 31A shall apply as if sections 127 and 135(3) did not apply.

(1C) In applying section 31A(7) and (8)—

- (a) the reference in section 31A(8) to an allowable loss or chargeable gain which accrued on the section 30 disposal shall be taken as a

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reference to the allowable loss or chargeable gain which would have accrued had sections 127 and 135(3) not applied, and

(b) an allowable loss shall be treated as a chargeable gain of nil.”

(3) In subsection (2)—

(a) for “subsection (1) above” there shall be substituted “subsections (1) to (1C) above”, and

(b) for “that subsection” there shall be substituted “those subsections”.

5 This Schedule has effect in relation to any disposal of an asset which occurs on or after 9th March 1999.