



# Corporation Tax Act 2010

## 2010 CHAPTER 4

### PART 5

#### GROUP RELIEF

##### **Modifications etc. (not altering text)**

- C1** Pt. 5 applied (with effect in accordance with s. 148 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [s. 125](#) (with [s. 147](#), [Sch. 17](#))

### CHAPTER 1

#### INTRODUCTION

#### **97 Introduction to Part**

- (1) This Part—
  - (a) allows a company to surrender losses and other amounts, and
  - (b) enables, in certain cases involving groups or consortiums of companies, other companies to claim corporation tax relief for the losses and other amounts that are surrendered.
- (2) The corporation tax relief mentioned in subsection (1) is called “group relief”.
- (3) Chapter 2 allows a company within the charge to corporation tax to surrender losses and other amounts it has for an accounting period.
- (4) Chapter 3 allows a non-UK resident company that is resident or carrying on a trade in the European Economic Area to surrender losses and other amounts it has for a period.
- (5) Chapter 4 sets out how a company may claim group relief in respect of losses and other amounts surrendered, how group relief is given and limitations on the amount of group relief to be given on a claim.

*Status: Point in time view as at 17/07/2014.*

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- (6) Chapter 5 explains certain key concepts for the purposes of group relief, including (in particular) how to determine if a company is a member of a group of companies or is a member of, or is owned by, a consortium.
- (7) Chapter 6 contains provision about persons holding equity in companies and about distributions of companies' profits and assets (which is relevant for the purposes of sections 143(3)(b) and (c) and 144(3)(b) and (c) (in Chapter 4) and section 151(4)(a) and (b) (in Chapter 5)).
- (8) Chapter 7 contains definitions that apply for the purposes of this Part and miscellaneous provisions.
- (9) For provision about making claims for group relief, see Part 8 of Schedule 18 to FA 1998 (which includes provision in paragraph 76 of that Schedule for the making of assessments or other adjustments if group relief has been given which is, or has become, excessive).

## CHAPTER 2

### SURRENDER OF COMPANY'S LOSSES ETC FOR AN ACCOUNTING PERIOD

#### *Introduction*

#### **98 Overview of Chapter**

- (1) This Chapter allows a company to surrender losses and other amounts it has for an accounting period.
- (2) Sections 99 to 104 set out the basic provisions about the surrendering of losses and other amounts.
- (3) Sections 105 to 110 place restrictions on the surrendering of losses and other amounts.

#### *Basic provisions about surrendering losses and other amounts*

#### **99 Surrendering of losses and other amounts**

- (1) This section applies if a company has one or more of the following for an accounting period—
  - (a) a trading loss (see section 100),
  - (b) a capital allowance excess (see section 101),
  - (c) a deficit within Chapter 16 of Part 5 of CTA 2009 (non-trading deficit on loan relationship),
  - (d) amounts allowable as qualifying charitable donations (see Part 6),
  - (e) a UK property business loss (see section 102),
  - (f) management expenses (see section 103), and
  - (g) a non-trading loss on intangible fixed assets (see section 104).
- (2) The company may surrender the losses and other amounts under this Chapter so far as the losses and other amounts are eligible for corporation tax relief (apart from this Part).

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- (3) Subsection (2) applies in relation to losses and other amounts within subsection (1) (a) to (c) even if the company has other profits in the accounting period mentioned in subsection (1) from which the losses and other amounts could be deducted.
- (4) But so far as losses and other amounts are within subsection (1)(d) to (g), subsection (2) is subject to the restriction in section 105.
- (5) Subsection (2) is also subject to—
  - (a) sections 106 to 110 (which place further restrictions on what the surrendering company may surrender),
  - (b) sections 432 and 433 (which restrict relief for expenses treated as incurred under Chapter 3 or 4 of Part 9), and
  - (c) sections 887 and 888 (which restrict relief in certain cases involving partnership losses in a business of leasing plant or machinery).
- (6) Under paragraph 70(1) of Schedule 18 to FA 1998, the company surrenders losses or other amounts, so far as eligible for surrender under this Chapter, by consenting to one or more claims for group relief in relation to the amounts (see Requirement 1 in section 130).
- (7) In this Part, in relation to losses or other amounts within subsection (1) that a company has for an accounting period—
  - “the surrenderable amounts” means the losses or other amounts so far as eligible for surrender under this Chapter,
  - “surrendering company” means the company that has the losses or other amounts, and
  - “the surrender period” means the accounting period for which the company has the losses or other amounts.

## **100 Meaning of “trading loss”**

- (1) In section 99(1)(a) “trading loss” means a loss made in a trade in the surrender period.
- (2) But it does not include—
  - (a) a loss made in a trade carried on wholly outside the United Kingdom, or
  - (b) a loss that is not eligible for relief under section 37 as a result of section 44 or 48.

## **101 Meaning of “capital allowance excess”**

- (1) In section 99(1)(b) “capital allowance excess” means an excess of the kind mentioned in section 260(1) of CAA 2001 for the surrender period.
- (2) In determining if there is such an excess for the surrender period and, if there is, its amount, apply section 260(1) of CAA 2001 but subject to subsections (3) and (4).
- (3) Capital allowances brought forward from previous accounting periods are to be ignored.
- (4) The reference in section 260(1) of CAA 2001 to a description of the company's income is to be read as a reference to that description of income before deductions for—
  - (a) losses of any accounting period other than the surrender period, or
  - (b) capital allowances.

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## 102 Meaning of “UK property business loss”

- (1) In section 99(1)(e) “UK property business loss” means a loss made in a UK property business in the surrender period.
- (2) But it does not include a loss treated as made in the surrender period as a result of section 62(5).

## 103 Meaning of “management expenses”

- (1) In section 99(1)(f) “management expenses” means expenses that are deductible for the surrender period under section 1219 of CTA 2009.
- (2) But it does not include—
  - (a) expenses that are deductible for the surrender period as a result of section 1223 of CTA 2009, or
  - (b) amounts treated as expenses deductible for the surrender period as a result of section 63 above.

## 104 Meaning of “non-trading loss on intangible fixed assets”

- (1) In section 99(1)(g) “non-trading loss on intangible fixed assets” is to be read in accordance with Part 8 of CTA 2009.
- (2) But so much of such a loss as is made up of an amount carried forward under section 753(3) of CTA 2009 is excluded from the scope of section 99(1)(g).

*Restrictions on losses and other amounts that may be surrendered*

## 105 Restriction on surrender of losses etc within section 99(1)(d) to (g)

- (1) This section applies if the surrendering company has for the surrender period losses or other amounts within section 99(1)(d) to (g) (“relevant amounts”) that are eligible for corporation tax relief (apart from this Part).
- (2) The surrendering company may not surrender any relevant amount under this Chapter unless the total of the relevant amounts exceeds [<sup>F1</sup>the profit-related threshold] .
- (3) If the total of the relevant amounts does exceed [<sup>F2</sup>the profit-related threshold] —
  - (a) the surrendering company may surrender relevant amounts, but
  - (b) the total amount that may be surrendered is limited to the amount of the excess.

[<sup>F3</sup>(3A) The profit-related threshold” is the sum of—

- (a) the surrendering company's gross profits of the surrender period, and
- (b) where chargeable profits of a CFC for an accounting period ending in the surrender period are apportioned to the surrendering company in accordance with step 3 in subsection (1) of 371BC of TIOPA 2010 and the surrendering company is in relation to that accounting period of the CFC a chargeable company for the purposes of step 4 in that subsection, the total of the chargeable profits so apportioned.

(3B) Where—

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- (a) an accounting period of a CFC ending in the surrender period is one to which (because of paragraph 50 of Schedule 20 of FA 2012) the repeal of Chapter 4 of Part 17 of ICTA does not apply,
  - (b) chargeable profits of the CFC for that accounting period are apportioned to the surrendering company in accordance with sections 747(3) and 752 of ICTA, and
  - (c) the surrendering company is not prevented by section 747(5) of ICTA from being chargeable to tax in respect of the CFC for that accounting period, the profit-related threshold also includes the total of the chargeable profits so apportioned.]
- (4) If the surrendering company surrenders relevant amounts, the amount surrendered is treated as consisting of—
- (a) first, donations within section 99(1)(d),
  - (b) second, losses within section 99(1)(e),
  - (c) third, expenses within section 99(1)(f), and
  - (d) fourth, losses within section 99(1)(g).
- (5) For the purposes of this section the surrendering company's gross profits of the surrender period are its profits for that period without any of the following—
- (a) a deduction in respect of any of the kinds of thing mentioned in section 99(1),
  - (b) a deduction falling to be made in respect of losses, allowances or other amounts of any other period (whether or not in respect of a kind of thing so mentioned), and
  - (c) a deduction falling to be made by virtue of section 63 of this Act or section 1223(3) of CTA 2009 (other amounts carried forward).
- [<sup>F4</sup>(5A) For the purposes of this section—
- “CFC” has the same meaning as in Part 9A of TIOPA 2010, except that in subsection (3B) it means a controlled foreign company as defined by section 747(2) of ICTA;
- “chargeable profits”, in relation to a CFC, is to be read in accordance with section 371BA(3) of TIOPA 2010, except that in subsection (3B) it is to be read in accordance with section 747(6) of ICTA.]
- (6) This section is subject to section 305 (oil activities: availability of group relief against ring fence profits).

#### Textual Amendments

- F1** Words in s. 105(2) substituted (with effect in accordance with s. 29(6)-(9) of the amending Act) by [Finance Act 2013 \(c. 29\), s. 29\(2\)](#)
- F2** Words in s. 105(3) substituted (with effect in accordance with s. 29(6)-(9) of the amending Act) by [Finance Act 2013 \(c. 29\), s. 29\(3\)](#)
- F3** S. 105(3A)(3B) inserted (with effect in accordance with s. 29(6)-(9) of the amending Act) by [Finance Act 2013 \(c. 29\), s. 29\(4\)](#)
- F4** S. 105(5A) inserted (with effect in accordance with s. 29(6)-(9) of the amending Act) by [Finance Act 2013 \(c. 29\), s. 29\(5\)](#)

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## 106 Restriction on losses etc surrenderable by UK resident

- (1) This section applies if the surrendering company is UK resident.
- (2) The surrendering company may not surrender a loss or other amount under this Chapter so far as the loss or other amount—
  - (a) is attributable to a permanent establishment through which the company carries on a trade outside the United Kingdom (see subsection (3)), and
  - (b) is, or represents, an amount within subsection (5).
- (3) A loss or other amount is attributable to a permanent establishment of the surrendering company if (ignoring this section) the amount could be included in the company's surrenderable amounts for the surrender period if those amounts were determined—
  - (a) by reference to that establishment alone, and
  - (b) by applying, in relation to that establishment, principles corresponding in all material respects to those mentioned in subsection (4).
- (4) The principles are those that would be applied for corporation tax purposes in determining an equivalent loss or other amount in the case of a permanent establishment through which a non-UK resident company carries on a trade in the United Kingdom.
- (5) An amount is within this subsection if, for the purposes of non-UK tax (see section 187) chargeable under the law of the territory in which the permanent establishment is situated, the amount is (in any period) deductible from or otherwise allowable against non-UK profits (see section 108) of a person other than the surrendering company.
- (6) Subsection (7) applies for the purposes of subsection (5) if, in order to determine if an amount is deductible or otherwise allowable for the purposes of non-UK tax chargeable under the law of a territory, it is necessary under that law to know if the amount (or a corresponding amount) is deductible or otherwise allowable for tax purposes in the United Kingdom.
- (7) The amount is to be treated as deductible or otherwise allowable for the purposes of the non-UK tax chargeable under the law of the territory concerned if (and only if) the surrendering company is treated as resident in that territory for the purposes of the non-UK tax.

## 107 Restriction on losses etc surrenderable by non-UK resident

- (1) This section applies if the surrendering company is a non-UK resident company carrying on a trade in the United Kingdom through a permanent establishment.
- [<sup>F5</sup>(1A) If the surrendering company is established in the EEA (within the meaning of section 134A), it may surrender a loss or other amount under this Chapter only so far as conditions A and B are met.  
 Subsection (6A) imposes restrictions on a surrender under this subsection.]
- (2) [<sup>F6</sup>In any other case, the] surrendering company may surrender a loss or other amount under this Chapter only so far as conditions A, B and C are met in relation to the loss or other amount.

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- (3) Condition A is that the loss or other amount is attributable to activities of the surrendering company in respect of which it is within the charge to corporation tax for the surrender period.
- (4) Condition B is that the loss or other amount is not attributable to activities of the surrendering company that are double taxation exempt for the surrender period (see section 186).
- (5) Condition C is that—
  - (a) the loss or other amount does not correspond to, and is not represented in, an amount within subsection (6), and
  - (b) no amount brought into account in calculating the loss or other amount corresponds to, or is represented in, an amount within subsection (6).
- (6) An amount is within this subsection if, for the purposes of non-UK tax chargeable under the law of a territory, the amount is (in any period) deductible from or otherwise allowable against non-UK profits of any person.
- [<sup>F7</sup>(6A) A loss or other amount may not be surrendered by virtue of subsection (1A) if and to the extent that it, or any amount brought into account in calculating it, corresponds to, or is represented in, amounts within subsection (6B).
- (6B) An amount is within this subsection if, for the purposes of non-UK tax chargeable under the law of a territory, the amount is (in any period) deducted from or otherwise allowed against non-UK profits of any person.]
- (7) But an amount is not to be taken to be within subsection (6) [<sup>F8</sup>or (6B) ] by reason only that it is—
  - (a) an amount of profits brought into account for the purpose of being excluded from non-UK profits of the person, or
  - (b) an amount brought into account in calculating an amount of profits brought into account as mentioned in paragraph (a).
- (8) Subsection (9) applies for the purposes of subsection (6) if, in order to determine if an amount is deductible or otherwise allowable for the purposes of non-UK tax chargeable under the law of a territory, it is necessary under that law to know if the amount (or a corresponding amount) is deductible or otherwise allowable for tax purposes in the United Kingdom.
- (9) The amount is to be treated as deductible or otherwise allowable for the purposes of the non-UK tax chargeable under the law of the territory concerned.

#### Textual Amendments

- F5** S. 107(1A) inserted (with effect in accordance with s. 30(6)-(8) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), s. 30(2)
- F6** Words in s. 107(2) substituted (with effect in accordance with s. 30(6)-(8) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), s. 30(3)
- F7** S. 107(6A)(6B) inserted (with effect in accordance with s. 30(6)-(8) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), s. 30(4)
- F8** Words in s. 107(7) inserted (with effect in accordance with s. 30(6)-(8) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), s. 30(5)

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## 108 Meaning of “non-UK profits”

- (1) In sections 106 and 107 “non-UK profits”, in relation to a person, means—
  - (a) amounts within subsection (2), or
  - (b) amounts taken into account in calculating amounts within subsection (2).
- (2) Amounts are within this subsection if they—
  - (a) are taken for the purposes of the non-UK tax in question to be the amount of the profits, income or gains on which (after allowing for deductions) the person is charged with that tax, and
  - (b) are not amounts corresponding to, and are not represented in, the total profits of any person of any accounting period.
- (3) For the purposes of subsection (2)(b) amounts that arise from activities of a non-UK resident company that are double taxation exempt for an accounting period (see section 186) are excluded from the company's total profits of that period.

## 109 Restriction on losses etc surrenderable by dual resident

- (1) This section applies if in the surrender period the surrendering company is UK resident and is also within a charge to non-UK tax under the law of a territory because—
  - (a) it derives its status as a company from that law,
  - (b) its place of management is in that territory, or
  - (c) it is for some other reason treated under that law as resident in that territory for the purposes of that tax.
- (2) If condition A, B or C is met, the surrendering company may not surrender any losses or other amounts under this Chapter.
- (3) Condition A is that the surrendering company is not a trading company throughout the surrender period.
- (4) Condition B is that in the surrender period the surrendering company carries on a trade of such a description that the company's main function, or one of its main functions, consists of one or more of the following activities.

### *Activity 1*

Acquiring and holding shares, securities or investments of any other kind (whether directly or indirectly).

### *Activity 2*

Making, under loan relationships, payments in relation to which debits fall to be brought into account for the purposes of Part 5 of CTA 2009.

### *Activity 3*

Making payments which are qualifying charitable donations.

### *Activity 4*

Making payments similar to those within Activity 3 but which are deductible in calculating the profits of the surrendering company for corporation tax purposes.

### *Activity 5*

Obtaining funds for the purposes of, or otherwise in connection with, any of Activities 1 to 4.



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- (5) Condition C is that in the surrender period the surrendering company carries on one or more of Activities 1 to 5—
- (a) to an extent that does not appear to be justified by any trade which it carries on, or
  - (b) for a purpose that does not appear to be appropriate to any such trade.

## **110 Restriction on surrender of losses etc from alternative finance arrangements**

- (1) This section applies if the surrendering company is prevented from obtaining a deduction in respect of an amount by section 520 of CTA 2009 (provision not at arm's length: non-deductibility of relevant return).
- (2) The amount may not be surrendered under this Chapter.

## **CHAPTER 3**

### SURRENDERS MADE BY NON-UK RESIDENT COMPANY RESIDENT OR TRADING IN THE EEA

#### *Introduction*

## **111 Overview of Chapter**

- (1) This Chapter allows a non-UK resident company that is resident or carrying on a trade in the European Economic Area to surrender losses and other amounts it has for a period.
- (2) Section 113 sets out the basic provisions about the surrendering of losses and other amounts.
- (3) Sections 114 to 121 set out conditions that must be met if losses and other amounts are to be surrendered (see Step 2 in section 113(2)).
- (4) Sections 122 to 128 set out other rules, assumptions and exclusions (see Steps 3 and 5 in section 113(2)).

## **112 EEA related definitions**

In this Chapter—

“EEA accounting period” means a period for which an EEA related company has a loss or other amount,

“EEA amount” has the meaning given under Step 1 of section 113(2),

“EEA related company” means a non-UK resident company that—

- (a) is resident in an EEA territory, or
- (b) is not resident in any EEA territory but is carrying on a trade in an EEA territory through a permanent establishment, and

“EEA territory”, in relation to any time, means a territory outside the United Kingdom that is within the European Economic Area at that time.

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*Basic provisions about surrendering losses and other amounts*

**113 Steps to determine extent to which loss etc can be surrendered**

- (1) This section applies if an EEA related company has a loss or other amount for an EEA accounting period.
- (2) Take the following steps to determine the extent to which the EEA related company may surrender the loss or other amount under this Chapter.

*Step 1*

Determine the extent to which (if at all) the loss or other amount is eligible for corporation tax relief (apart from this Chapter). The loss or other amount may be surrendered only so far as it is not so eligible. A loss or other amount, so far as surrenderable under this Step, is referred to in this Chapter as an “EEA amount”.

*Step 2*

Determine the extent to which the EEA amount in question meets—

- (a) the equivalence condition (see section 114),
- (b) the EEA tax loss condition (see sections 115 and 116),
- (c) the qualifying loss condition (see sections 117 to 120), and
- (d) the precedence condition (see section 121).

References to “the qualifying part of the EEA amount” are references to the EEA amount so far as it meets all those conditions.

*Step 3*

Recalculate the EEA amount in accordance with section 128 using the assumptions set out in sections 123 to 126. The result is called “the recalculated EEA amount”.

*Step 4*

Determine the amount that may be surrendered. That amount is—

- (a) the qualifying part of the EEA amount, or
- (b) if less, an amount equal to the relevant proportion of the recalculated EEA amount.

If the recalculated EEA amount is an amount of income or other profits, the amount that may be surrendered is nil. “The relevant proportion” is the same as the proportion that the qualifying part of the EEA amount bears to the EEA amount.

*Step 5*

Determine the extent to which (if at all) the amount resulting from Step 4 is excluded by section 127. If any of that amount is excluded, reduce it accordingly.

- (3) If in recalculating the EEA amount at Step 3 it is to be assumed under section 125 that there are two or more accounting periods in relation to the EEA accounting period, the total of the amounts apportioned to the assumed accounting periods available for surrender under subsection (2) is not to exceed the qualifying part of the EEA amount.
- (4) Under paragraph 70(1) of Schedule 18 to FA 1998, an EEA related company surrenders an EEA amount, so far as eligible for surrender under this Chapter, by

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consenting to one or more claims for group relief in relation to the amount (see Requirement 1 in section 135).

- (5) In this Part, in relation to losses or other amounts that an EEA related company has for an EEA accounting period—

“the surrenderable amounts” means the losses or other amounts so far as eligible for surrender under this Chapter,

“surrendering company” means the company that has the losses or other amounts, and

“the surrender period” means the assumed accounting period under section 125 for which the company is taken to have the surrenderable amounts.

*Conditions that must be met*

**114 The equivalence condition**

An EEA amount meets the equivalence condition so far as it corresponds (in all material respects) to a loss or other amount within section 99(1)(a) to (g).

**115 The EEA tax loss condition: companies resident in EEA territory**

- (1) In the case of a surrendering company that is resident in an EEA territory (“the resident EEA territory”), an EEA amount meets the EEA tax loss condition so far as—
- (a) subsection (2) applies to the amount, and
  - (b) the amount is not excluded by subsection (3).
- (2) This subsection applies to the EEA amount so far as it is calculated in accordance with the rules of the resident EEA territory that are applicable for determining, in the surrendering company's case, the amount of any loss or other amount eligible for relief from any non-UK tax (see section 187) chargeable under the law of the resident EEA territory.
- (3) The EEA amount is excluded so far as, for corporation tax purposes, it is attributable to a permanent establishment through which the surrendering company carries on a trade in the United Kingdom.

**116 The EEA tax loss condition: companies not resident in EEA territory**

- (1) In the case of a surrendering company that is not resident in any EEA territory but is carrying on a trade in an EEA territory (“the relevant EEA territory”) through a permanent establishment, an EEA amount meets the EEA tax loss condition so far as—
- (a) subsection (2) applies to the amount, and
  - (b) the amount is not excluded by subsection (3).
- (2) This subsection applies to the EEA amount so far as it is calculated in accordance with the rules in the relevant EEA territory that are applicable for determining, in the surrendering company's case, the amount of any loss or other amount eligible for relief from any non-UK tax chargeable under the law of the relevant EEA territory.
- (3) The EEA amount is excluded so far as it is attributable to activities of the surrendering company that are subject to relieving arrangements.

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- (4) “Relieving arrangements” means arrangements within subsection (5) that have the effect mentioned in subsection (6) (or would have that effect if a claim were made).
- (5) Arrangements are within this subsection if they are made with a view to affording relief from double taxation in relation to—
  - (a) any non-UK tax chargeable under the law of the relevant EEA territory and any non-UK tax chargeable under the law of any other territory, or
  - (b) any non-UK tax chargeable under the law of the relevant EEA territory and United Kingdom income or corporation tax.
- (6) The effect referred to in subsection (4) is that the income or gains arising for the EEA accounting period from the activities are ignored in calculating the surrendering company's profits, income or gains chargeable to non-UK tax under the law of the relevant EEA territory for that period.

### **117 The qualifying loss condition: general**

- (1) An EEA amount meets the qualifying loss condition so far as sections 118, 119 and 120 apply to it.
- (2) In this section and sections 118 to 120, “the relevant EEA territory” means—
  - (a) the EEA territory in which the surrendering company is resident, or
  - (b) (as the case may be) the EEA territory in which the surrendering company carries on a trade through a permanent establishment.
- (3) In sections 118 and 119 “relevant non-UK tax” means any non-UK tax chargeable under the law of the relevant EEA territory or any other resident territory.
- (4) A “resident territory” is—
  - (a) if the surrendering company is resident in an EEA territory and is also resident in another territory outside the United Kingdom, that other territory, or
  - (b) if the surrendering company is not resident in any EEA territory, the territory (or territories) in which it is resident.

### **118 The qualifying loss condition: relief for current and previous periods**

- (1) This section applies to an EEA amount so far as subsections (2) and (3) apply to it (but subject to subsection (4)).
- (2) This subsection applies to the EEA amount so far as, for the purposes of any relevant non-UK tax, the EEA amount cannot be taken into account in calculating any profits, income or gains that—
  - (a) arise in the EEA accounting period or any previous period to the surrendering company or any other person, and
  - (b) are chargeable to that tax for the EEA accounting period or any previous period.
- (3) This subsection applies to the EEA amount so far as, for the purposes of any relevant non-UK tax, the EEA amount cannot be relieved in the EEA accounting period or any previous period—
  - (a) by the payment of a credit,
  - (b) by the elimination or reduction of a tax liability, or

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(c) in any other way.

- (4) This section applies to the EEA amount (or a part of it) only if every step is taken (whether by the surrendering company or any other person) to secure that the EEA amount (or part) is—
- (a) taken into account as mentioned in subsection (2), or
  - (b) relieved as mentioned in subsection (3).

### **119 The qualifying loss condition: relief for future periods**

- (1) This section applies to an EEA amount so far as subsections (2) and (3) apply to it.
- (2) This subsection applies to the EEA amount so far as, for the purposes of any relevant non-UK tax, the EEA amount cannot be taken into account in calculating any profits, income or gains that—
- (a) might arise in any period after the EEA accounting period to the surrendering company or any other person, and
  - (b) (if there were any) would be chargeable to that tax for any period after the EEA accounting period.
- (3) This subsection applies to the EEA amount so far as, for the purposes of any relevant non-UK tax, the EEA amount cannot be relieved in any period after the EEA accounting period—
- (a) by the payment of a credit,
  - (b) by the elimination or reduction of a tax liability, or
  - (c) in any other way.
- (4) The determination as to the extent to which the EEA amount—
- (a) cannot be taken into account as mentioned in subsection (2), or
  - (b) cannot be relieved as mentioned in subsection (3),
- is to be made as at the time immediately after the end of the EEA accounting period.

### **120 The qualifying loss condition: non-UK tax relief in another territory**

- (1) This section applies to an EEA amount so far as it is not excluded by subsection (2) or (3).
- (2) The EEA amount is excluded so far as, for the purposes of any non-UK tax chargeable under the law of any territory other than the relevant EEA territory, it has been taken into account in calculating any profits, income or gains that—
- (a) have arisen in any period to the surrendering company or any other person, and
  - (b) were chargeable to that tax for the period (or would have been so chargeable had the EEA amount not been so taken into account).
- (3) The EEA amount is excluded so far as, for the purposes of any non-UK tax chargeable under the law of any territory other than the relevant EEA territory, it has been relieved in any period—
- (a) by the payment of a credit,
  - (b) by the elimination or reduction of a tax liability, or
  - (c) in any other way.

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## 121 The precedence condition

- (1) An EEA amount meets the precedence condition so far as no relief can be given for it in any territory which—
  - (a) is outside the United Kingdom,
  - (b) is not the relevant EEA territory (as defined by section 117(2)), and
  - (c) is within subsection (2).
- (2) A territory is within this subsection if—
  - (a) a company resident in the territory owns (directly or indirectly) ordinary share capital in the surrendering company,
  - (b) a UK resident company owns (directly or indirectly) ordinary share capital in the company resident in the territory,
  - (c) the surrendering company is a 75% subsidiary of the UK resident company, and
  - (d) the surrendering company is not such a subsidiary as a result of its being a 75% subsidiary of another UK resident company.
- (3) In subsection (1) the reference to relief being given in any territory is a reference to relief being given—
  - (a) by taking the EEA amount (or a part of it) into account in calculating any profits, income or gains of any person chargeable to non-UK tax under the law of the territory,
  - (b) by the payment of a credit to any person under that law,
  - (c) by the elimination or reduction of a tax liability of any person under that law, or
  - (d) in any other way.
- (4) Chapter 5 explains how to determine if a company is a 75% subsidiary of another company.

*Other rules, assumptions and exclusions*

## 122 Assumptions to be made in recalculating EEA amount

Sections 123 to 126 apply for the purpose of recalculating the EEA amount at Step 3 in section 113.

## 123 Assumptions as to UK residence

- (1) Assume that the surrendering company is UK resident throughout the EEA accounting period.
- (2) But this does not require it to be assumed—
  - (a) that there is any change in the place or places at which the surrendering company carries on its activities (although see section 124), or
  - (b) that the surrendering company ceases to be UK resident at the end of the EEA accounting period.
- (3) Assume that the surrendering company becomes UK resident (and, therefore, within the charge to corporation tax) at the beginning of the EEA accounting period.

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## **124 Assumptions as to places in which activities carried on**

- (1) If during the EEA accounting period the surrendering company carries on a trade wholly or partly in the relevant EEA territory, assume that the trade is carried on wholly or partly in the United Kingdom.
- (2) If the surrendering company holds any estate, interest or rights in or over land in the relevant EEA territory, assume that the land is in the United Kingdom.
- (3) For the purposes of subsection (2) the reference to holding an estate, interest or rights in or over land in the relevant EEA territory is to be read so as to produce the result that most closely corresponds with that produced by applying those concepts of law in relation to a UK property business or land in the United Kingdom.
- (4) In this section “the relevant EEA territory” means—
  - (a) the EEA territory in which the surrendering company is resident, or
  - (b) (as the case may be) the EEA territory in which the surrendering company carries on a trade through a permanent establishment.

## **125 Assumptions as to accounting periods**

- (1) Assume that an accounting period of the surrendering company begins at the beginning of the EEA accounting period.
- (2) Assume that the accounting period ends—
  - (a) when the EEA accounting period ends, or
  - (b) if earlier, at the end of 12 months.
- (3) If the accounting period ends before the end of the EEA accounting period, assume that a further accounting period then begins and so on until the EEA accounting period ends.
- (4) Assume that any further accounting period ends—
  - (a) at the end of 12 months, or
  - (b) if earlier, when the EEA accounting period ends.

## **126 Assumptions in relation to capital allowances**

- (1) This section applies if, before the EEA accounting period, the surrendering company incurs capital expenditure on the provision of plant or machinery for the purposes of any activity.
- (2) For the purposes of Part 2 of CAA 2001 assume that the plant or machinery—
  - (a) was provided for purposes wholly other than those of the activity, and
  - (b) was not brought into use for the purposes of the activity until the beginning of the EEA accounting period,and section 13 of CAA 2001 is to apply accordingly.
- (3) This section is to be read as if contained in Part 2 of CAA 2001.

## **127 Amounts excluded because of certain arrangements**

- (1) An amount (or part of an amount) resulting from Step 4 in section 113 is excluded if—

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- (a) it is not attributable for corporation tax purposes to any permanent establishment through which the surrendering company carries on a trade in the United Kingdom, and
  - (b) the following condition is met.
- (2) The condition is that the amount (or part)—
- (a) would not have resulted from Step 4 but for any arrangements within subsection (3), or
  - (b) would not have arisen to the surrendering company but for any such arrangements.
- (3) Arrangements are within this subsection if their main purpose, or one of their main purposes, is to secure that the amount (or part) may be surrendered for the purposes of group relief.
- (4) “Arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

## **128 Rules for recalculating EEA amount**

- (1) For the purposes of Step 3 in section 113 the EEA amount is to be recalculated in accordance with any provision made by or under the Corporation Tax Acts—
- (a) that applies for the purpose of calculating for corporation tax purposes losses or other amounts to which the EEA amount corresponds, or
  - (b) that otherwise affects in any way the amount of those losses or other amounts that is eligible for corporation tax relief.
- (2) For the purposes of subsection (1) the Treasury may by regulations provide for the modification of any provision made by or under the Corporation Tax Acts—
- (a) that applies as mentioned in subsection (1)(a), or
  - (b) that otherwise affects an amount as mentioned in subsection (1)(b).
- (3) Regulations under subsection (2) may make provision in relation to—
- (a) all classes of trade or business, or
  - (b) any particular class or classes of trade or business.
- (4) Regulations under subsection (2) may—
- (a) make different provision for different cases or different purposes,
  - (b) contain incidental, supplemental, consequential and transitional provision and savings, and
  - (c) make provision having retrospective effect.



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## CHAPTER 4

### CLAIMS FOR GROUP RELIEF

#### *Introduction*

#### **129 Overview of Chapter**

- (1) This Chapter sets out how a company may claim group relief, how group relief is given and limitations on the amount of group relief to be given on a claim.
- (2) [<sup>F9</sup>Sections 130 to 134A] deal with claims in relation to surrenderable amounts under Chapter 2.
- (3) Sections 135 and 136 deal with claims in relation to surrenderable amounts under Chapter 3.
- (4) Section 137 deals with how group relief is given.
- (5) Sections 138 to 142 set out a limitation on the amount of group relief to be given on any claim.
- (6) Sections 143 to 149 set out limitations on the amount of group relief to be given on claims based on consortium condition 1, consortium condition 2 or consortium condition 3 (see Requirement 3 in section 130).

#### **Textual Amendments**

- F9** Words in s. 129(2) substituted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 6 para. 2](#)

#### *Surrenderable amounts under Chapter 2*

#### **130 Group relief claims on amounts surrenderable under Chapter 2**

- (1) This section applies in relation to the surrendering company's surrenderable amounts for the surrender period under Chapter 2.
- (2) A company (“the claimant company”) may make a claim for group relief for an accounting period (“the claim period”) in relation to those amounts (in whole or in part) if the following requirements are met.

##### *Requirement 1*

The surrendering company consents to the claim.

##### *Requirement 2*

There is a period (“the overlapping period”) that is common to the claim period and the surrender period.

##### *Requirement 3*

At a time during the overlapping period—

- (a) the group condition is met (see section 131),
- (b) consortium condition 1 is met (see section 132),

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- (c) consortium condition 2 is met (see section [F10]section 133(1) and (3) to (8)), or
  - (d) consortium condition 3 is met (see [F11]section 133(2) to (8)).
- (3) More than one company may make a claim for group relief in relation to any surrenderable amounts (but the giving of group relief in relation to any claim is subject to the provisions of this Chapter).

#### Textual Amendments

- F10** Words in s. 130(2)(c) substituted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 6 para. 3\(a\)](#)
- F11** Words in s. 130(2)(d) substituted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 6 para. 3\(b\)](#)

### 131 The group condition

- (1) The group condition is met if the surrendering company and the claimant company—
  - (a) are members of the same group of companies (see section 152), and
  - (b) are both UK related.
- (2) For the meaning of “UK related” in subsection (1)(b) and in sections 132 and 133, see section 134.

### 132 Consortium condition 1

- (1) Consortium condition 1 is met if subsection (2) or (3) applies.
- (2) This subsection applies if—
  - (a) the surrendering company is a trading company or a holding company,
  - (b) the surrendering company is owned by a consortium,
  - (c) the claimant company is a member of the consortium, and
  - (d) both companies are UK related.
- (3) This subsection applies if—
  - (a) the claimant company is a trading company or a holding company,
  - (b) the claimant company is owned by a consortium,
  - (c) the surrendering company is a member of the consortium, and
  - (d) both companies are UK related.
- (4) But consortium condition 1 is not met if a profit on a sale within subsection (5) by the company that is the member of the consortium would be a trading receipt of the member.
- (5) A sale is within this subsection if it is a sale of—
  - (a) the share capital the member owns in the company owned by the consortium, or
  - (b) if that company is owned by the consortium as a result of section 153(3) (consortiums involving holding companies), the share capital the member owns in the holding company in question.

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### 133 Consortium conditions 2 and 3

- (1) Consortium condition 2 is met if—
- (a) the surrendering company is a trading company or a holding company,
  - (b) the surrendering company is owned by a consortium,
  - (c) the claimant company is not a member of the consortium,
  - (d) the claimant company is a member of the same group of companies as a third company (“the link company”),
  - (e) the link company is a member of the consortium, <sup>F12</sup>...
  - <sup>F13</sup>(f) the surrendering company and the claimant company are both UK related, and
  - (g) the link company is UK related or established in the EEA. ]
- (2) Consortium condition 3 is met if—
- (a) the claimant company is a trading company or a holding company,
  - (b) the claimant company is owned by a consortium,
  - (c) the surrendering company is not a member of the consortium,
  - (d) the surrendering company is a member of the same group of companies as a third company (“the link company”),
  - (e) the link company is a member of the consortium, <sup>F14</sup>...
  - <sup>F15</sup>(f) the surrendering company and the claimant company are both UK related, and
  - (g) the link company is UK related or established in the EEA. ]
- (3) But neither consortium condition 2 nor consortium condition 3 is met if a profit on a sale within subsection (4) by the link company would be a trading receipt of that company.
- (4) A sale is within this subsection if it is a sale of—
- (a) the share capital the link company owns in the company (“the consortium company”) owned by the consortium as mentioned in subsection (1)(b) or (2)(b), or
  - (b) if the consortium company is owned by the consortium as a result of section 153(3) (consortiums involving holding companies), the share capital the link company owns in the holding company in question.
- <sup>F16</sup>(5) Subsection (6) applies where the link company—
- (a) is established in the EEA, but
  - (b) is not UK related.
- (6) Neither consortium condition 2 nor consortium condition 3 is met unless the link company is a member of the same group of companies as the other company mentioned in subsection (1)(d) or (2)(d) without the involvement of a relevant company.
- (7) A “relevant company” is a company that is not established in the EEA.
- (8) For the purposes of subsection (6) a company (“A”) is a member of the same group of companies as another company (“B”) without the involvement of a relevant company if—
- (a) in a case where A is the 75% subsidiary of B, B owns at least 75% of A's ordinary share capital otherwise than through a relevant company,
  - (b) in a case where B is the 75% subsidiary of A, A owns at least 75% of B's ordinary share capital otherwise than through a relevant company, and

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- (c) in a case where neither company is the 75% subsidiary of the other but both are 75% subsidiaries of a third company, the third company—
- (i) is not a relevant company, and
  - (ii) owns at least 75% of A's ordinary share capital, and at least 75% of B's ordinary share capital, otherwise than through a relevant company.]

#### Textual Amendments

- F12** Word in s. 133(1)(e) omitted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 6 para. 4\(2\)\(a\)](#)
- F13** S. 133(1)(f)(g) substituted for s. 133(1)(f) (with effect in accordance with Sch. 6 para. 10 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 6 para. 4\(2\)\(b\)](#)
- F14** Word in s. 133(2)(e) omitted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 6 para. 4\(3\)\(a\)](#)
- F15** S. 133(2)(f)(g) substituted for s. 133(2)(f) (with effect in accordance with Sch. 6 para. 10 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 6 para. 4\(3\)\(b\)](#)
- F16** S. 133(5)-(8) inserted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 6 para. 4\(4\)](#)

### 134 Meaning of “UK related” company

For the purposes of sections 131 to 133 a company is UK related if—

- (a) it is a UK resident company, or
- (b) it is a non-UK resident company carrying on a trade in the United Kingdom through a permanent establishment.

#### [<sup>F17</sup>134A Companies “established in the EEA”

- (1) For the purposes of section 133 a company is established in the EEA if—
- (a) it is constituted under the law of the United Kingdom or an EEA territory, and
  - (b) it has its registered office, central administration or principal place of business within the European Economic Area.
- (2) In this section “EEA territory”, in relation to any time, means a territory outside the United Kingdom that is within the European Economic Area at that time.]

#### Textual Amendments

- F17** S. 134A inserted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 6 para. 5](#)

### *Surrenderable amounts under Chapter 3*

### 135 Group relief claims on amounts surrenderable under Chapter 3

- (1) This section applies in relation to the surrendering company's surrenderable amounts for the surrender period under Chapter 3.

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- (2) A company (“the claimant company”) may make a claim for group relief for an accounting period (“the claim period”) in relation to those amounts (in whole or in part) if the following requirements are met.

*Requirement 1*

The surrendering company consents to the claim.

*Requirement 2*

There is a period (“the overlapping period”) that is common to the claim period and the surrender period.

*Requirement 3*

The EEA group condition is met (see section 136) at a time during the overlapping period.

- (3) More than one company may make a claim for group relief in relation to any surrenderable amounts (but the giving of group relief in relation to any claim is subject to the provisions of this Chapter).

### **136 The EEA group condition**

- (1) The EEA group condition is met if subsection (2) or (3) applies.
- (2) This subsection applies if—
- (a) the surrendering company is a 75% subsidiary of the claimant company, and
  - (b) the claimant company is UK resident.
- (3) This subsection applies if—
- (a) both the surrendering company and the claimant company are 75% subsidiaries of a third company, and
  - (b) the third company is UK resident.
- (4) Chapter 5 explains how to determine if a company is a 75% subsidiary of another company.

#### *Giving of group relief*

### **137 Deduction from total profits**

- (1) If the claimant company makes a claim as mentioned in section 130 or 135, the group relief is given by the making of a deduction from the claimant company's total profits of the claim period.
- (2) The amount of the deduction is—
- (a) an amount equal to the surrendering company's surrenderable amounts for the surrender period, or
  - (b) if the claim is in relation to only part of those amounts, an amount equal to that part.
- (3) Subsection (2) is subject to—
- (a) subsections (4) to (7),

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- (b) the limitation set out in sections 138 to 142 that applies in relation to all claims for group relief,
  - (c) the limitations set out in sections 143 to 149 that apply in relation to claims based on consortium condition 1, consortium condition 2 or consortium condition 3,
  - (d) Chapter 3 of Part 4 (relief in cases involving trading losses made in limited partnerships or limited liability partnerships), and
  - (e) section 305(1) (group relief in cases involving oil activities etc).
- (4) The deduction is to be made—
- (a) before deductions for relief within subsection (5), but
  - (b) after all other deductions to be made at Step 2 in section 4(2) (apart from deductions for group relief on other claims).
- (5) The deductions within this subsection are deductions for relief—
- (a) under section 37 in relation to a loss made in an accounting period after the claim period,
  - (b) under section 260(3) of CAA 2001 in relation to capital allowances for an accounting period after the claim period, and
  - (c) under section 389 or 459 of CTA 2009 in relation to a deficit for a deficit period after the claim period.
- (6) For the purposes of subsection (4)(b) it is to be assumed that the claimant company has claimed all relief available to it for the claim period under section 37 of this Act or section 260(3) of CAA 2001.
- (7) Corporation tax relief is not to be given more than once for the same amount, whether—
- (a) by giving group relief and by giving some other relief (for any accounting period) to the surrendering company, or
  - (b) by giving group relief more than once.

*General limitation on amount of group relief to be given*

### **138 Limitation on amount of group relief applying to all claims**

The amount of group relief to be given on a claim (“the current claim”) is limited to—

- (a) the unused part of the surrenderable amounts (see section 139), or
- (b) if less, the unrelieved part of the claimant company's available total profits of the claim period (see section 140).

### **139 Unused part of the surrenderable amounts**

- (1) The unused part of the surrenderable amounts is the amount equal to—
- (a) the surrenderable amount for the overlapping period (see subsection (2)), less
  - (b) the amount of prior surrenders for that period (see subsections (3) to (5)).
- (2) To determine the surrenderable amount for the overlapping period—
- (a) take the proportion of the surrender period included in the overlapping period, and
  - (b) apply that proportion to the surrenderable amounts for the surrender period.

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The surrenderable amount for the overlapping period is the amount given as a result of paragraph (b).

- (3) To determine the amount of prior surrenders for the overlapping period—
- (a) identify any prior claims for the purposes of this section (see subsection (4)), and
  - (b) take the steps set out in subsection (5) in relation to each such claim.

The amount of prior surrenders for the overlapping period is the total of the previously used amounts given at Step 3 in subsection (5) for all the prior claims.

- (4) A claim is a prior claim for the purposes of this section if—
- (a) it is a claim by any company for group relief in respect of the whole or a part of the amounts that, in relation to the current claim, are the surrendering company's surrenderable amounts for the surrender period,
  - (b) it is made before the current claim, and
  - (c) it has not been withdrawn.
- (5) These are the steps referred to in subsection (3)(b) to be taken in relation to each prior claim.

*Step 1*

Identify the overlapping period for the prior claim.

*Step 2*

Identify any period that is common to the overlapping period for the current claim and the overlapping period for the prior claim. If there is a common period, go to Step 3. If there is no common period, there is no previously used amount in relation to the prior claim (and ignore Step 3).

*Step 3*

Determine the previously used amount of group relief in relation to the prior claim (see subsection (6)).

- (6) To determine the previously used amount of group relief in relation to a prior claim—
- (a) take the proportion of the overlapping period for the prior claim that is included in the common period identified at Step 2 in relation to that claim, and
  - (b) apply that proportion to the amount of group relief given on the prior claim.
- The previously used amount of group relief in relation to the prior claim is the amount given as a result of paragraph (b).
- (7) For the meaning of “the overlapping period” see section 142.

## **140 Unrelieved part of claimant company's available total profits**

- (1) The unrelieved part of the claimant company's available total profits of the claim period is the amount equal to—
- (a) the company's available total profits for the overlapping period (see subsection (2)), less
  - (b) the amount of previously claimed group relief for that period (see subsection (3)).
- (2) To determine the available total profits for the overlapping period—

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- (a) take the proportion of the claim period included in the overlapping period, and
- (b) apply that proportion to the available total profits of the claim period.

The available total profits for the overlapping period is the amount given as a result of paragraph (b).

- (3) To determine the amount of previously claimed group relief for the overlapping period—
- (a) identify any prior claims for the purposes of this section (see subsection (4)), and
  - (b) take the steps set out in subsection (5) in relation to each such claim.

The amount of previously claimed group relief for the overlapping period is the total of the previously claimed amounts given at Step 3 in subsection (5) for all the prior claims.

- (4) A claim is a prior claim for the purposes of this section if—
- (a) it is a claim by the claimant company for group relief which would be given by way of a deduction from the company's total profits of the claim period,
  - (b) it is made before the current claim, and
  - (c) it has not been withdrawn.

- (5) These are the steps referred to in subsection (3)(b) to be taken in relation to each prior claim.

*Step 1*

Identify the overlapping period for the prior claim.

*Step 2*

Identify any period that is common to the overlapping period for the current claim and the overlapping period for the prior claim. If there is a common period, go to Step 3. If there is no common period, there is no previously claimed amount in relation to the prior claim (and ignore Step 3).

*Step 3*

Determine the previously claimed amount of group relief in relation to the prior claim (see subsection (6)).

- (6) To determine the previously claimed amount of group relief in relation to a prior claim—
- (a) take the proportion of the overlapping period for the prior claim that is included in the common period identified at Step 2 in relation to that claim, and
  - (b) apply that proportion to the amount of group relief given on the prior claim.

The previously claimed amount of group relief in relation to the prior claim is the amount given as a result of paragraph (b).

- (7) In this section references to the claimant company's "available total profits" are references to its total profits after the deductions mentioned in section 137(4)(b).
- (8) Further, if the claimant company is non-UK resident its available total profits do not include any part of its total profits that arise from activities that are double taxation exempt for the claim period (see section 186) (so far as those profits are not covered by the deductions mentioned in section 137(4)(b)).



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(9) For the meaning of “the overlapping period” see section 142.

#### **141 Sections 139 and 140: supplementary**

- (1) If two or more claims for group relief are made at the same time, for the purposes of sections 139 and 140 treat the claims as made—
  - (a) in such order as the company making them may elect or the companies making them may jointly elect, or
  - (b) if no such election is made, in such order as an officer of Revenue and Customs may direct.
- (2) For the purposes of Step 3 in subsection (5) of each of sections 139 and 140 the amount of group relief given on a prior claim is determined on the basis that relief is given on the claim before it is given on any later claim.
- (3) If the use of the proportion mentioned in section 139(2) or (6), or in section 140(2) or (6), would, in the circumstances of a particular case, produce a result that is unjust or unreasonable, the proportion is to be modified so far as necessary to produce a result that is just and reasonable.

#### **142 Meaning of “the overlapping period”**

- (1) In sections 139 and 140 “the overlapping period”, in relation to a claim for group relief, means the period that is common to the claim period and the surrender period (see Requirement 2 in section 130(2) or, as the case may be, section 135(2)).
- (2) But if during any part of the overlapping period the group relief condition is not met, that part is treated as not forming part of the overlapping period but instead as forming—
  - (a) a part of the surrender period that is not included in the overlapping period, and
  - (b) a part of the claim period that is not included in the overlapping period.
- (3) The group relief condition is the condition on which the claim for group relief is based, that is—
  - the group condition,
  - consortium condition 1,
  - consortium condition 2,
  - consortium condition 3, or
  - the EEA group condition.

*Limitations on group relief if claim based on consortium condition 1, 2 or 3*

#### **143 Condition 1: surrendering company owned by consortium**

- (1) This section applies if—
  - (a) the claimant company makes a claim for group relief based on consortium condition 1, and
  - (b) it is the surrendering company that is owned by the consortium.

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- (2) The group relief to be given on the claim is limited to the ownership proportion of the surrenderable amount for the overlapping period (see section 139(2) to determine the surrenderable amount for the overlapping period).
- (3) The ownership proportion is the same as the lowest of the following proportions—
  - (a) the proportion of the ordinary share capital of the surrendering company that is beneficially owned by the claimant company,
  - (b) the proportion of any profits available for distribution to equity holders of the surrendering company to which the claimant company is beneficially entitled (see Chapter 6),<sup>F18</sup> ...
  - (c) the proportion of any assets of the surrendering company available for distribution to such equity holders on a winding up to which the claimant company would be beneficially entitled (see Chapter 6) [<sup>F19</sup>, and
  - (d) the proportion of the voting power in the surrendering company that is directly possessed by the claimant company.]
- (4) For the purposes of subsection (3)—
  - (a) the proportions mentioned in [<sup>F20</sup>paragraphs (a) to (d)] of that subsection are those prevailing during the overlapping period, and
  - (b) if any of those proportions changes during that period, use the average of that proportion during that period.
- (5) If the surrendering company is owned by the consortium as a result of section 153(3) (consortiums involving holding companies), references in subsection (3) to the surrendering company are to be read as references to the holding company in question.
- (6) In this section “the overlapping period” is to be read in accordance with section 142.

#### Textual Amendments

- F18** Word in s. 143(3)(b) omitted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 6 para. 7\(2\)\(a\)](#)
- F19** S. 143(3)(d) and word inserted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 6 para. 7\(2\)\(b\)](#)
- F20** Words in s. 143(4)(a) substituted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 6 para. 7\(3\)](#)

#### 144 Condition 1: claimant company owned by consortium

- (1) This section applies if—
  - (a) the claimant company makes a claim for group relief based on consortium condition 1, and
  - (b) it is the claimant company that is owned by the consortium.
- (2) The group relief to be given on the claim is limited to the ownership proportion of the claimant company's [<sup>F21</sup>available total profits] of the overlapping period (see section 140(2) to determine the [<sup>F21</sup>available total profits] of the overlapping period).
- (3) The ownership proportion is the same as the lowest of the following proportions—
  - (a) the proportion of the ordinary share capital of the claimant company that is beneficially owned by the surrendering company,

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- (b) the proportion of any profits available for distribution to equity holders of the claimant company to which the surrendering company is beneficially entitled (see Chapter 6), <sup>F22</sup>...
  - (c) the proportion of any assets of the claimant company available for distribution to such equity holders on a winding up to which the surrendering company would be beneficially entitled (see Chapter 6) [<sup>F23</sup>, and
  - (d) the proportion of the voting power in the claimant company that is directly possessed by the surrendering company.]
- (4) For the purposes of subsection (3)—
- (a) the proportions mentioned in [<sup>F24</sup>paragraphs (a) to (d)] of that subsection are those prevailing during the overlapping period, and
  - (b) if any of those proportions changes during that period, use the average of that proportion during that period.
- (5) If the claimant company is owned by the consortium as a result of section 153(3) (consortiums involving holding companies), references in subsection (3) to the claimant company are to be read as references to the holding company in question.
- (6) In this section “the overlapping period” is to be read in accordance with section 142.

#### Textual Amendments

- F21** Words in s. 144(2) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Tax Law Rewrite Acts \(Amendment\) Order 2013 \(S.I. 2013/463\)](#), arts. 1(2), 10
- F22** Word in s. 144(3)(b) omitted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 6 para. 8\(2\)\(a\)](#)
- F23** S. 144(3)(d) and word inserted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 6 para. 8\(2\)\(b\)](#)
- F24** Words in s. 144(4)(a) substituted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 6 para. 8\(3\)](#)

#### 145 Conditions 2 and 3: limitations in sections 143 and 144

- (1) This section applies if the claimant company makes a claim for group relief based on consortium condition 2 or consortium condition 3.
- (2) If the claim is based on consortium condition 2, the limitation on group relief in section 143(2) applies in relation to the claim, but for this purpose references in section 143(3) to the claimant company are to be read as references to the link company.
- (3) If the claim is based on consortium condition 3, the limitation on group relief in section 144(2) applies in relation to the claim, but for this purpose references in section 144(3) to the surrendering company are to be read as references to the link company.

#### 146 Conditions 2 and 3: companies in link company's group

- (1) If the claimant company makes a claim for group relief based on consortium condition 2, the amount of group relief to be given on the claim is limited by subsections (2) and (3).

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- (2) There is a limit on the amount of group relief that can be given, in total, on consortium claims made by the link company and group companies in relation to the surrendering company's surrenderable amounts for the surrender period.
- (3) That limit is the maximum amount of group relief that could be given to the link company in relation to those amounts on consortium claims—
- (a) assuming that no consortium claims in relation to those amounts were made by group companies based on consortium condition 2,<sup>F25</sup>...
  - <sup>F26</sup>(aa) assuming that the link company was UK related, and ]
  - (b) ignoring any lack of profits of the link company from which deductions could be made as mentioned in section 137(1).
- (4) If the claimant company makes a claim for group relief based on consortium condition 3, the amount of group relief to be given on the claim is limited by subsections (5) to (7).
- (5) There is a limit on the amount of group relief that can be given, in total, to the claimant company for the claim period on consortium claims made in relation to losses and other amounts surrendered by the link company and group companies.
- (6) That limit is the same as the limit that, as a result of section 144(2), would apply for the purposes of a consortium claim made by the claimant company for the claim period in relation to losses or other amounts surrendered by the link company<sup>F27</sup>, assuming that the link company was UK related].
- (7) In determining the limit that would apply as a result of section 144(2) it is to be assumed that the accounting period of the link company is the same as the accounting period of the claimant company.
- (8) In this section—
- “consortium claim” means a claim for group relief based on consortium condition 1, consortium condition 2 or consortium condition 3,<sup>F28</sup>...
- “group company”, for the purpose of determining in accordance with this section a limitation on the amount of group relief to be given on a claim based on consortium condition 2 or consortium condition 3, means a company that is a member of the same group of companies as the link company (other than the link company itself)<sup>F29</sup>, and
- “UK related”, in relation to a company, has the meaning given by section 134.]

#### Textual Amendments

- F25** Word in s. 146(3)(a) omitted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 6 para. 6\(2\)\(a\)](#)
- F26** S. 146(3)(aa) inserted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 6 para. 6\(2\)\(b\)](#)
- F27** Words in s. 146(6) inserted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 6 para. 6\(3\)](#)
- F28** Word in s. 146(8) omitted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 6 para. 6\(4\)\(a\)](#)
- F29** Words in s. 146(8) inserted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 6 para. 6\(4\)\(b\)](#)

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### **[<sup>F30</sup>146A] Conditions 1 and 2: surrendering company not controlled by claimant company etc**

- (1) This section applies if—
  - (a) the claimant company makes a claim for group relief based on consortium condition 1,
  - (b) it is the surrendering company that is owned by the consortium, and
  - (c) during any part of the overlapping period, arrangements within subsection (3) are in place which enable a person to prevent the claimant company, either alone or together with one or more other companies that are members of the consortium, from controlling the surrendering company.
- (2) This section also applies if—
  - (a) the claimant company makes a claim for group relief based on consortium condition 2, and
  - (b) during any part of the overlapping period, arrangements within subsection (3) are in place which enable a person to prevent the link company, either alone or together with one or more other companies that are members of the consortium, from controlling the surrendering company.
- (3) Arrangements are within this subsection if—
  - (a) the company, either alone or together with one or more other companies that are members of the consortium, would control the surrendering company, but for the existence of the arrangements, and
  - (b) the arrangements form part of a scheme the main purpose, or one of the main purposes, of which is to enable the claimant company to obtain a tax advantage under this Chapter.
- (4) The group relief to be given on the claim is to be determined as if the surrenderable amount for the overlapping period were 50% of what it would be but for this section (see section 139(2) to determine the surrenderable amount for the overlapping period).
- (5) In this section “ the overlapping period ” is to be read in accordance with section 142.
- (6) Section 1139 (“tax advantage”) applies for the purposes of this section.

#### **Textual Amendments**

**F30** Ss. 146A, 146B inserted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 6 para. 9**

### **146B Conditions 1 and 3: claimant company not controlled by surrendering company etc**

- (1) This section applies if—
  - (a) the claimant company makes a claim for group relief based on consortium condition 1,
  - (b) it is the claimant company that is owned by the consortium, and
  - (c) during any part of the overlapping period, arrangements within subsection (3) are in place which enable a person to prevent the surrendering company, either alone or together with one or more other companies that are members of the consortium, from controlling the claimant company.

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- (2) This section also applies if—
- (a) the claimant company makes a claim for group relief based on consortium condition 3, and
  - (b) during any part of the overlapping period, arrangements within subsection (3) are in place which enable a person to prevent the link company, either alone or together with one or more other companies that are members of the consortium, from controlling the claimant company.
- (3) Arrangements are within this subsection if—
- (a) the company, either alone or together with one or more other companies that are members of the consortium, would control the claimant company, but for the existence of the arrangements, and
  - (b) the arrangements form part of a scheme the main purpose, or one of the main purposes, of which is to enable the claimant company to obtain a tax advantage under this Chapter.
- (4) The group relief to be given on the claim is to be determined as if the claimant company's total profits for the overlapping period were 50% of what they would be but for this section (see section 140(2) to determine the total profits for the overlapping period).
- (5) In this section “ the overlapping period ” is to be read in accordance with section 142.
- (6) Section 1139 (“tax advantage”) applies for the purposes of this section.]

#### Textual Amendments

**F30** Ss. 146A, 146B inserted (with effect in accordance with Sch. 6 para. 10 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 6 para. 9**

### 147 Conditions 1 and 2: surrenderable amounts including trading loss

- (1) This section applies if—
- (a) the claimant company makes a claim for group relief based on consortium condition 1,
  - (b) it is the surrendering company that is owned by the consortium,
  - (c) the surrendering company's surrenderable amounts for the surrender period include a loss within section 99(1)(a), and
  - (d) the surrendering company has profits (of any description) of that period from which the loss could be deducted under section 37.
- (2) This section also applies if—
- (a) the claimant company makes a claim for group relief based on consortium condition 2,
  - (b) the surrendering company's surrenderable amounts for the surrender period include a loss within section 99(1)(a), and
  - (c) the surrendering company has profits (of any description) of that period from which the loss could be deducted under section 37.
- (3) The amount of group relief to be given on the claim is to be determined on the assumption that—

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- (a) the surrendering company makes a claim under section 37 in relation to the loss mentioned in subsection (1)(c) or (2)(b), and
  - (b) relief under that section is to be given in relation to the loss before the group relief is given.
- (4) If section 148 also applies in relation to the claim for group relief, in giving effect to subsection (3) of this section the surrenderable amounts for the purposes of subsections (3) and (4) of that section are to be reduced by the amount of relief to be given on the surrendering company's claim as mentioned in subsection (3)(b) of this section.

#### **148 Conditions 1 and 2: surrendering company in group of companies**

- (1) This section applies if—
- (a) the claimant company makes a claim for group relief based on consortium condition 1,
  - (b) it is the surrendering company that is owned by the consortium, and
  - (c) the surrendering company is also a member of a group of companies.
- (2) This section also applies if—
- (a) the claimant company makes a claim for group relief based on consortium condition 2, and
  - (b) the surrendering company is a member of a group of companies.
- [<sup>F31</sup>(3) In the case of the claim (“the current claim”) the surrendering company’s surrenderable amounts for the surrender period are to be treated as reduced (but not below nil) by the group’s potential relief.]
- (5) The group's potential relief is the maximum amount of group relief that could be given if every claim that could be made based on the group condition in respect of the surrenderable amounts was in fact made (and for this purpose it is to be assumed that the maximum possible claim is made in each case).
- (6) Before determining the maximum amount of potential group relief under subsection (5), take account of any claim made before the current claim that—
- (a) is a claim for group relief based on the group condition, and
  - (b) is in relation to losses or other amounts surrendered by a member of the same group of companies as the surrendering company (other than the surrendering company itself).

#### **Textual Amendments**

**F31** S. 148(3) substituted for s. 148(3)(4) (with effect in accordance with art. 1(3) of the amending S.I.) by [The Tax Law Rewrite Acts \(Amendment\) Order 2013 \(S.I. 2013/463\)](#), arts. 1(2), **11**

#### **149 Conditions 1 and 3: claimant company in group of companies**

- (1) This section applies if—
- (a) the claimant company makes a claim for group relief based on consortium condition 1,
  - (b) it is the claimant company that is owned by the consortium, and
  - (c) the claimant company is also a member of a group of companies.

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- (2) This section also applies if—
- (a) the claimant company makes a claim for group relief based on consortium condition 3, and
  - (b) the claimant company is a member of a group of companies.
- [<sup>F32</sup>(3) In the case of the claim (“the current claim”) the claimant company’s available total profits of the claim period are to be treated as reduced (but not below nil) by the group’s potential relief.]
- (5) The group's potential relief is the maximum amount of group relief that could be claimed by the claimant company for the claim period on claims based on the group condition.
- (6) Before determining the maximum amount of potential group relief under subsection (5), take account of any claim made before the current claim that—
- (a) is a claim for group relief based on the group condition made by another member of the same group of companies as the claimant company, and
  - (b) is in relation to losses or other amounts surrendered by a company that is also a member of that group.

#### **Textual Amendments**

- F32** S. 149(3) substituted for s. 149(3)(4) (with effect in accordance with art. 1(3) of the amending S.I.) by [The Tax Law Rewrite Acts \(Amendment\) Order 2013 \(S.I. 2013/463\), arts. 1\(2\), 12](#)

## **CHAPTER 5**

### SUBSIDIARIES, GROUPS AND CONSORTIUMS

#### *Introduction*

#### **150 Overview of Chapter**

- (1) This Chapter explains how to determine if a company—
- (a) is a 75% or 90% subsidiary of another company (see section 151),
  - (b) is a member of a group of companies (see section 152),
  - (c) is owned by a consortium (see section 153), or
  - (d) is a member of a consortium (see section 153).
- (2) Sections 154 to 156 qualify those explanations in cases involving transfers of companies.

#### *Explanations of terms*

#### **151 Meaning of “75% subsidiary” and “90% subsidiary”**

- (1) In this Part “75% subsidiary” and “90% subsidiary” are to be read in accordance with Chapter 3 of Part 24, but subject to subsections (2) to (4).



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- (2) In applying the definition of “75% subsidiary” in section 1154(3), share capital of a registered industrial or provident society is to be treated as if it were ordinary share capital.
- (3) If—
- (a) a company (“the shareholder”) directly owns shares in another company, and
  - (b) a profit on the sale of those shares would be a trading receipt of the shareholder,
- the shareholder is treated as not being the owner of those shares for the purpose of determining if any company is a 75% subsidiary of any other company.
- (4) If a company (“the subsidiary”) would, apart from this subsection, be treated as a 75% or 90% subsidiary of another company (“the parent”) at any time, the subsidiary is not to be so treated unless at that time the parent—
- (a) is beneficially entitled to at least 75% or 90% (as the case may be) of any profits available for distribution to equity holders of the subsidiary (see Chapter 6), and
  - (b) would be beneficially entitled to at least 75% or 90% (as the case may be) of any assets of the subsidiary available for distribution to such equity holders on a winding up (see Chapter 6).

## **152 Groups of companies**

For the purposes of this Part two companies are members of the same group of companies if—

- (a) one is the 75% subsidiary of the other, or
- (b) both are 75% subsidiaries of a third company.

## **153 Companies owned by consortiums and members of consortiums**

- (1) For the purposes of this Part a company is owned by a consortium if—
- (a) the company is not a 75% subsidiary of any company, and
  - (b) at least 75% of the company's ordinary share capital is beneficially owned by other companies each of which beneficially owns at least 5% of that capital.
- (2) The other companies each owning at least 5% of the share capital are the members of the consortium for the purposes of this Part.
- (3) If—
- (a) a trading company is a 90% subsidiary of a holding company and is not a 75% subsidiary of any company apart from the holding company, and
  - (b) as a result of subsection (1), the holding company is owned by a consortium,
- then for the purposes of this Part the trading company is also owned by the consortium.

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### *Arrangements for transfers of companies*

#### **154 Arrangements for transfer of member of group of companies etc**

- (1) This section applies if, apart from this section, one company (“the first company”) and another company (“the second company”) would be members of the same group of companies.
- (2) For the purposes of this Part the companies are not members of the same group of companies if—
  - (a) one of the companies has surrenderable amounts for an accounting period (“the current period”), and
  - (b) arrangements within subsection (3) are in place.
- (3) Arrangements are within this subsection if they have any of the following effects <sup>[F33]</sup>(but see sections <sup>[F34]</sup>155A ] and 155B)].

##### *Effect 1*

At some time during or after the current period, the first company or any successor of it—

- (a) could cease to be a member of the same group of companies as the second company, and
- (b) could become a member of the same group of companies as a third company (see subsection (4)).

##### *Effect 2*

At some time during or after the current period a person (other than the first or second company) has or could obtain, or persons together (other than those companies) have or could obtain, control of the first company but not of the second company.

##### *Effect 3*

At some time during or after the current period, a third company could start to carry on the whole or a part of a trade that at a time during the current period is carried on by the first company and could do so—

- (a) as the successor of the first company, or
- (b) as the successor of another company which is not a third company and which started to carry on the whole or a part of the trade during or after the current period.

- (4) A “third company” means a company that is not, apart from any arrangements within subsection (3), a member of the same group of companies as the first company.

#### **Textual Amendments**

**F33** Words in s. 154(3) inserted (with effect in accordance with art. 15 of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2012 \(S.I. 2012/266\)](#), arts. 1, **13(2)**

**F34** Word in s. 154(3) substituted (with effect in accordance with s. 31(4) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), s. **31(2)**

*Status: Point in time view as at 17/07/2014.*

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## 155 Arrangements for transfer of company owned by consortium etc

- (1) This section applies if, apart from this section, a trading company would be owned by a consortium.
- (2) The trading company is not owned by the consortium if—
  - (a) for an accounting period (“the current period”) the trading company or a member of the consortium has surrenderable amounts, and
  - (b) arrangements within subsection (3) are in place.
- (3) Arrangements are within this subsection if they have any of the following effects [<sup>F35</sup>(but see sections [<sup>F36</sup>155A] and 155B)].

### *Effect 1*

The trading company or a successor of it could, at some time during or after the current period, become a 75% subsidiary of a third company (see subsection (4)).

### *Effect 2*

Any person who owns, or any persons who together own, less than 50% of the ordinary share capital of the trading company—

- (a) has, or together have, control of the trading company, or
- (b) could obtain such control at some time during or after the current period.

### *Effect 3*

Any person (“P”), either alone or together with persons connected with P—

- (a) holds or could obtain at least 75% of the qualifying votes, or
- (b) controls or could control the exercise of at least 75% of those votes.

For this purpose—

“connected” is to be read in accordance with section 1122 but as if subsection (4) of that section were omitted, and

“qualifying votes” means the votes which may be cast in a poll taken at a general meeting of the trading company held during or after the current period.

### *Effect 4*

A third company could start to carry on the whole or a part of a trade that at a time during the current period is carried on by the trading company and could do so—

- (a) as the successor of the trading company, or
- (b) as the successor of another company which is not a third company and which started to carry on the whole or a part of the trade during or after the current period.

- (4) A “third company” means a company that is not, apart from any arrangements within subsection (3), a member of the same group of companies as the trading company.
- (5) If the trading company would, apart from this section, be owned by a consortium as a result of section 153(3) (consortiums involving holding companies)—
  - (a) references in this section (apart from references under Effect 4) to the trading company are to be read as including references to the holding company concerned, and
  - (b) Effect 3 does not apply if P is that holding company.

*Status: Point in time view as at 17/07/2014.*

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### Textual Amendments

- F35** Words in s. 155(3) inserted (with effect in accordance with art. 15 of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2012 \(S.I. 2012/266\)](#), arts. 1, **13(3)**
- F36** Word in s. 155(3) substituted (with effect in accordance with s. 31(4) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), s. **31(2)**

### [<sup>F37</sup> 155A Certain arrangements not within sections 154 and 155

- (1) Arrangements entered into by a joint venture company which, apart from this section, would be arrangements within section 154(3) or 155(3) are not to be treated as such arrangements if and so long as—
  - (a) the arrangements fall within subsection (2), and
  - (b) none of the contingencies mentioned in subsection (3) to which the arrangements relate has occurred.
- (2) Arrangements fall within this subsection if they are—
  - (a) an agreement which provides for the transfer of shares or securities in the joint venture company to one or more members of that company on, or as a result of, one or more contingencies mentioned in subsection (3) occurring, or
  - (b) a provision in a constitutional document of the joint venture company which provides for the suspension of a member's voting rights on, or as a result of, one or more of those contingencies occurring.
- (3) The contingencies referred to in subsections (1)(b) and (2) are—
  - (a) the voluntary departure of a member,
  - (b) the commencement of the liquidation, administration, administrative receivership or receivership of, or the entering into of a voluntary arrangement by, a member under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 or the commencement, or entering into, of equivalent proceedings or arrangements under the law of any country or territory outside the United Kingdom,
  - (c) a serious deterioration in the financial condition of a member,
  - (d) a change of control of a member,
  - (e) a default by a member in performing its obligations under any agreement between the members or with the joint venture company (which, for this purpose, includes any constitutional document of the joint venture company),
  - (f) an external change in the commercial circumstances in which the joint venture company operates such that its viability is threatened,
  - (g) an unresolved disagreement between members, and
  - (h) any contingency of a similar kind to that mentioned in any of paragraphs (a) to (g) which is provided for, but not intended to happen, when the arrangements in question are entered into.
- (4) This section does not apply if a member could alone or together with connected persons dictate the terms or timing of—
  - (a) the transfer of shares or securities, or
  - (b) the suspension of a member's voting rights,
 in advance of one or more of the contingencies occurring.

*Status: Point in time view as at 17/07/2014.*

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- (5) For the purposes of subsection (4) members are not connected with each other by reason only of their membership of the joint venture company.
- (6) In this section—
- “connected” has the same meaning as in section 1122;
  - “constitutional document” means a memorandum of association, articles of association or any other similar document regulating the affairs of the joint venture company;
  - “joint venture company” means a company which—
    - (a) has two or more member companies, and
    - (b) carries on a commercial activity governed by an agreement regulating the affairs of its members;
  - “member” means a holder of shares or securities in the joint venture company.

#### Textual Amendments

**F37** Ss. 155A, 155B inserted (with effect in accordance with art. 15 of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2012 \(S.I. 2012/266\)](#), arts. 1, **13(1)**

#### **155B** Certain mortgage arrangements not within sections 154 and 155

- (1) Arrangements entered into by a company which, apart from this section, would be arrangements within section 154(3) or 155(3) are not to be treated as such arrangements if and so long as—
- (a) the arrangements are a mortgage, secured by way of shares or securities in the company, which on default or the happening of any other event allows the mortgagee to exercise its rights against the mortgagor, and
  - (b) the mortgagee has not exercised its rights against the mortgagor.
- (2) This section does not apply if the mortgagee—
- (a) possesses greater rights in respect of the shares or securities which are the subject of the mortgage than it requires to protect its interest as mortgagee, or
  - (b) could alone or together with connected persons dictate the terms or timing of the default or the happening of any other event which allows it to exercise its rights against the mortgagor.
- (3) For the purposes of subsection (2)(b) the mortgagee is not, by reason only of the mortgage, connected with a company whose shares or securities are the subject of the mortgage.
- (4) In this section—
- “connected” has the same meaning as in section 1122;
  - “mortgage” means—
    - (a) in England and Wales, and Northern Ireland, any legal or equitable charge, and
    - (b) in Scotland, any right in security,(and section 1166(1) (definition of “mortgage”: Scotland) does not apply).]

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### Textual Amendments

**F37** Ss. 155A, 155B inserted (with effect in accordance with art. 15 of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2012 \(S.I. 2012/266\)](#), arts. 1, **13(1)**

## 156 Sections 154 and 155: supplementary

- (1) This section applies for the purposes of sections 154 [<sup>F38</sup>to 155B].
- (2) “Arrangements”—
- (a) means arrangements of any kind (whether or not in writing), but
  - (b) does not include [<sup>F39</sup>— ]
    - (i) a power of a Minister of the Crown, the Scottish Ministers or a Northern Ireland department to give directions to a statutory body as to the disposal of assets belonging to the body or to a subsidiary of the body.<sup>[F40]</sup>, or
    - (ii) a condition or requirement imposed by, or agreed with, a Minister of the Crown, the Scottish Ministers, a Northern Ireland department or a statutory body.]
- [<sup>F41</sup>(2A) In subsection (2) “statutory body” means a body (other than a company as defined by section 1(1) of the Companies Act 2006) established by or under a statutory provision for the purpose of carrying out functions conferred on it by or under a statutory provision, except that the Treasury may, by order, specify that a body is or is not to be a statutory body for this purpose.]
- (3) A company is the successor of another company if it carries on a trade which, in whole or in part, the other company used to carry on and the circumstances are such that—
- (a) Chapter 1 of Part 22 (transfers of trade without a change of ownership) applies in relation to the companies as, respectively, the successor and the predecessor within the meaning of that Chapter, or
  - (b) the two companies are connected with each other in accordance with section 1122.

### Textual Amendments

- F38** Words in s. 156(1) substituted (with effect in accordance with art. 15 of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2012 \(S.I. 2012/266\)](#), arts. 1, **13(4)**
- F39** Words in s. 156(2)(b) renumbered as s. 156(2)(b)(i) (with effect in accordance with s. 31(4) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), s. **31(1)(a)**
- F40** S. 156(2)(b)(ii) and word inserted (with effect in accordance with s. 31(4) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), s. **31(1)(b)**
- F41** S. 156(2A) inserted (with effect in accordance with s. 31(4) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), s. **31(1)(c)**

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## CHAPTER 6

### EQUITY HOLDERS AND PROFITS OR ASSETS AVAILABLE FOR DISTRIBUTION

#### Modifications etc. (not altering text)

- C2 Pt. 5 Ch. 6 applied (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), [ss. 241\(6\)](#), [381\(1\)](#) (with [Sch. 9 paras. 1-9](#), [22](#))
- C3 Pt. 5 Ch. 6 applied (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), [ss. 345\(7\)](#), [381\(1\)](#) (with [Sch. 9 paras. 1-9](#), [22](#), [31](#))
- C4 Pt. 5 Ch. 6 applied (with modifications) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), s. 252(10) (as substituted (with effect in accordance with s. 1184(1) of the amending Act) by [2010 c. 4](#), s. [1184\(1\)](#), [Sch. 1 para. 252](#) (with [Sch. 2](#)))
- C5 Pt. 5 Ch. 6 applied (with modifications) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), s. 170(8) (as substituted (with effect in accordance with s. 1184(1) of the amending Act) by [2010 c. 4](#), s. [1184\(1\)](#), [Sch. 1 para. 242\(4\)](#) (with [Sch. 2](#)))
- C6 Pt. 5 Ch. 6 applied (with modifications) by [Finance Act 2009 \(c. 4\)](#), s. 772(1)(2) (as substituted (with effect in accordance with s. 1184(1) of the amending Act) by [2010 c. 4](#), s. [1184\(1\)](#), [Sch. 1 para. 646](#) (with [Sch. 2](#)))
- C7 Pt. 5 Ch. 6 applied (with modifications) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), [Sch. 7AC para. 8\(2\)](#) (as substituted (with effect in accordance with s. 1184(1) of the amending Act) by [2010 c. 4](#), s. [1184\(1\)](#), [Sch. 1 para. 269\(3\)](#) (with [Sch. 2](#)))
- C8 Pt. 5 Ch. 6 applied by [Capital Allowances Act 2001 \(c. 2\)](#), [ss. 212G\(5\)](#), [212H\(2\)](#) (as inserted (with effect in accordance with [Sch. 4 para. 5](#), [6](#) of the amending Act) by [2010 c. 13](#), [Sch. 4 para. 2](#))
- C9 Pt. 5 Ch. 6 applied (with modifications) by [2007 c. 3](#), s. 257BF(3)(4) (as inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 6 para. 1](#))
- C10 Pt. 5 Ch. 6 applied by [1992 c. 12](#), s. [236T\(2\)](#) (as inserted (with effect in accordance with [Sch. 37 paras. 2](#), [3](#) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 37 para. 1](#))
- C11 Pt. 5 Ch. 6 applied by [2007 c. 3](#), s. [257MV\(8\)](#) (as inserted (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 11 para. 1](#))
- C12 Pt. 5 Ch. 6 applied by [2010 c. 8](#), s. [345\(7\)-\(10\)](#) (as substituted (with effect in accordance with s. [39\(4\)](#) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), s. [39\(2\)](#))

#### *Introduction*

#### 157 Introduction to Chapter

- (1) This Chapter applies for the purposes of sections 143(3)(b) and (c), 144(3)(b) and (c) and 151(4)(a) and (b).
- (2) For the purposes of this Chapter—
  - (a) “new consideration” has the meaning given by section 1115, and
  - (b) all loans are regarded as being securities.

#### *Equity holders*

#### 158 Meaning of “equity holder”

- (1) An equity holder of a company (“the relevant company”) is any person who—
  - (a) holds ordinary shares in the company (see section 160), or

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- (b) is a loan creditor of the company in relation to a loan other than a normal commercial loan (see section 162).
- (2) For the purposes of subsection (1)(b) a person is a loan creditor of a company if the person is a creditor in respect of any redeemable loan capital issued by the company or in respect of a debt incurred by the company—
- (a) for any money borrowed or capital assets acquired by the company,
  - (b) for any right to receive income created in favour of the company, or
  - (c) for consideration the value of which to the company was, at the time when the debt was incurred, substantially less than the amount of the debt (including any premium on the debt).
- (3) Subsection (1) is subject to section 159.

**Modifications etc. (not altering text)**

**C13** S. 158(1)(b) modified (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Taxation of Regulatory Capital Securities Regulations 2013 \(S.I. 2013/3209\)](#), regs. 1(1), 4 (with reg. 8)

**159 Use of relevant company's assets**

- (1) Subsection (2) applies if—
- (a) a person (“P”) has, directly or indirectly, provided new consideration for any shares or securities in the relevant company,
  - (b) assets of the relevant company are used by P for the purposes of a trade carried on by P or are used by a person connected with P for the purposes of a trade carried on by that connected person, and
  - (c) in respect of those assets an allowance within subsection (3) has been made to the relevant company.
- (2) P (and no other person) is to be treated as being an equity holder in relation to the shares or securities mentioned in subsection (1)(a).
- (3) The allowances within this subsection are—
- (a) an annual investment allowance, within the meaning of Chapter 5 of Part 2 of CAA 2001, in relation to expenditure incurred by the relevant company on the provision of plant or machinery,
  - (b) a first-year allowance, within the meaning of that Chapter, in relation to expenditure so incurred,
  - (c) a writing-down allowance, within the meaning of that Chapter, in relation to expenditure so incurred, and
  - (d) an allowance under Chapter 3 of Part 6 of CAA 2001 in relation to expenditure incurred by the relevant company on research and development (within the meaning of that Part).
- (4) If—
- (a) P is a bank,
  - (b) the only new consideration provided by P is provided in the normal course of banking business by way of a normal commercial loan (see section 162), and
  - (c) the cost to the relevant company of the assets mentioned in subsection (1)(b) is less than the amount of the new consideration,



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the reference in subsection (2) to the shares or securities is to be read as a reference to only so much of that normal commercial loan as is equal to that cost of those assets.

**Modifications etc. (not altering text)**

**C14** S. 159(4)(b) modified (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Taxation of Regulatory Capital Securities Regulations 2013 \(S.I. 2013/3209\)](#), regs. 1(1), 4 (with reg. 8)

**160 Meaning of “ordinary shares”**

- (1) For the purposes of section 158(1)(a) “ordinary shares” means shares other than restricted preference shares.
- (2) For the purposes of subsection (1) restricted preference shares are shares that meet each of conditions A to E.
- (3) Condition A is that the shares are issued for consideration which is or includes new consideration.
- (4) Condition B is that the shares do not carry any right to conversion into shares or securities other than a right to conversion into—
  - (a) shares to which section 164(1) applies,
  - (b) securities to which section 164(2) applies, or
  - (c) shares or securities in the relevant company's quoted parent company (see section 164(3) to (7)).
- (5) Condition C is that the shares do not carry any right to the acquisition of shares or securities.
- (6) Condition D is that the shares—
  - (a) do not carry a right to dividends, or
  - (b) carry a restricted right to dividends (see section 161).
- (7) Condition E is that the shares, on repayment, do not carry rights to an amount exceeding the new consideration mentioned in subsection (3) except so far as those rights are reasonably comparable with those generally carried by fixed dividend shares listed on a recognised stock exchange.

**Modifications etc. (not altering text)**

**C15** S. 160 modified by 1988 c. 1, Sch. 25 para. 2(7A) (as inserted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 147\(2\)\(b\)](#) (with Sch. 2))

**C16** S. 160 excluded (1.3.2013) by [The Building Societies \(Core Capital Deferred Shares\) Regulations 2013 \(S.I. 2013/460\)](#), regs. 1(1), 3(2)(c) (with reg. 1(2))

**161 Meaning of “restricted right to dividends”**

- (1) For the purposes of condition D in section 160, a right to dividends carried by shares in a company is a “restricted right to dividends” if—
  - (a) the dividends represent no more than a reasonable commercial return on the new consideration received by the company in respect of the shares, and

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- (b) subsection (2), (3) or (4) applies.
- (2) This subsection applies if—
- (a) the dividends are of a fixed amount or are at a fixed percentage rate of the nominal value of the shares, and
  - (b) the company is not entitled, by virtue of any term subject to which the shares are issued or held, to reduce the amount of, or not to pay, any of the dividends.
- (3) This subsection applies if—
- (a) the dividends are of a fluctuating percentage rate of the nominal value of the shares, and
  - (b) the company is not entitled, by virtue of any term subject to which the shares are issued or held, to reduce the amount of, or not to pay, any of the dividends.
- (4) This subsection applies if paragraph (a) of subsection (2) or (3) is met but paragraph (b) of that subsection is not met and—
- (a) the company is only entitled to reduce the amount of, or not to pay, any of the dividends in special circumstances, or
  - (b) having regard to all the circumstances, it is reasonable to assume that the company is only likely to reduce the amount of, or not to pay, any of the dividends in special circumstances.
- (5) For the purposes of subsection (3)(a) dividends are of a “fluctuating percentage rate” of the nominal value of shares if the rate fluctuates in accordance with—
- (a) a standard published rate of interest,
  - (b) the retail prices index, or
  - (c) any other general index of prices similar to the retail prices index that is published by the government, or by an agent of the government, of the country or territory in whose currency the shares are denominated.
- (6) For the purposes of subsection (4) a company reduces the amount of, or does not pay, dividends “in special circumstances” if—
- (a) at the time the dividend is or would be payable, the company is in severe financial difficulties, or
  - (b) the company does so for the purpose of following a recommendation of a relevant regulatory body.
- (7) The Treasury may by order specify circumstances in which a company is to be treated as in severe financial difficulties for the purposes of subsection (6)(a).
- (8) In subsection (6)(b) “relevant regulatory body” means—
- <sup>F42</sup>(a) in relation to a dividend paid by a company that is a PRA-authorised person for the purposes of the FISMA, the Prudential Regulation Authority,
  - (aa) in relation to a dividend paid by a company that is authorised for the purposes of the FISMA but does not fall within paragraph (a), the Financial Conduct Authority, and]
  - (b) in relation to a dividend paid by any other company, a body discharging functions in relation to the company under the law of a country or territory outside the United Kingdom that correspond to functions discharged by the Financial Services Authority in relation to a company authorised as mentioned in paragraph (a).

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### Textual Amendments

**F42** S. 161(8)(a)(aa) substituted for s. 161(8)(a) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 18 para. 129\(2\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.

## 162 Meaning of “normal commercial loan”

- (1) For the purposes of sections 158(1)(b) and 159(4)(b) “normal commercial loan” means a loan—
- (a) which is of or includes new consideration, and
  - (b) in relation to which each of conditions A to D is met.

<sup>F43</sup>(1A) . . . . .

- (2) Condition A is that the loan does not carry any right to conversion into shares or securities other than a right to conversion into—
- (a) shares to which section 164(1) applies,
  - (b) securities to which section 164(2) applies, or
  - (c) shares or securities in [<sup>F44</sup>a quoted unconnected company (see section 164(2A)) or in] the relevant company's quoted parent company (see section 164(3) to (7)).
- (3) Condition B is that the loan does not carry any right to the acquisition of shares or securities.
- (4) Condition C is that the loan does not entitle the loan creditor to any amount by way of interest which—
- (a) depends to any extent on the results of the relevant company's business or on the results of any part of that business,
  - (b) depends to any extent on the value of any of the relevant company's assets, or
  - (c) exceeds a reasonable commercial return on the new consideration lent.

This subsection needs to be read with section 163.

- (5) Condition D is that the loan is a loan in relation to which the loan creditor is entitled, on repayment, to an amount which—
- (a) does not exceed the new consideration lent, or
  - (b) is reasonably comparable with the amount generally repayable (in relation to an equal amount of new consideration) under the terms of issue of securities listed on a recognised stock exchange.

### Textual Amendments

**F43** S. 162(1A) repealed (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Taxation of Regulatory Capital Securities Regulations 2013 \(S.I. 2013/3209\)](#), regs. 1(1), [12\(a\)\(i\)](#)

**F44** Words in s. 162(2)(c) inserted (with effect in accordance with s. 32(7) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), s. [32\(2\)](#)

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### **163 Normal commercial loans: company's results or value of assets**

- (1) Interest is not within section 162(4)(a) by reason only that the terms of the loan provide for the rate of interest—
  - (a) to be reduced if the results of the relevant company's business or any part of the business improve, or
  - (b) to be increased if such results worsen.
- (2) Interest is not within section 162(4)(b) by reason only that the terms of the loan provide for the rate of interest—
  - (a) to be reduced if the value of any of the relevant company's assets increases, or
  - (b) to be increased if the value of any such assets decreases.
- (3) Subsection (4) applies if—
  - (a) a loan is made to the relevant company for the purpose of facilitating the acquisition of land,
  - (b) the loan is made on the basis mentioned in subsection (5), and
  - (c) none of the land that the loan is used to acquire is acquired with a view to resale at a profit.
- (4) Interest on the loan is not within section 162(4)(b) by reason only that the terms of the loan are such that the only way the loan creditor can enforce payment of an amount due is by exercising rights granted by way of security over the land that the loan is used to acquire.
- (5) The basis referred to in subsection (3)(b) is that—
  - (a) the whole of the loan is to be applied in the acquisition of land by the relevant company or in meeting incidental costs incurred wholly and exclusively for the purpose of obtaining the loan or providing security for the loan,
  - (b) the payment of any amount due in connection with the loan to the person making it is to be secured on the land that the loan is used to acquire, and
  - (c) no other security is to be required for the payment of any such amount.
- (6) “Incidental costs” means expenditure on fees, commissions, advertising, printing or other incidental matters.

### **164 Sections 160 and 162: supplementary**

- (1) This subsection applies to any shares—
  - (a) in relation to which conditions A, C, D and E in section 160 are met, and
  - (b) which do not carry any rights to conversion into shares or securities other than rights to conversion into shares or securities in the relevant company's quoted parent company (see subsections (3) to (6)).
- (2) This subsection applies to any securities—
  - (a) which represent a loan of or including new consideration,
  - (b) in relation to which conditions B, C and D in section 162 are met, and
  - (c) which do not carry any rights to conversion into shares or securities other than rights to conversion into shares or securities in [F45] a quoted unconnected company (see subsection (2A)) or in] the relevant company's quoted parent company.

*Status: Point in time view as at 17/07/2014.*

*Changes to legislation: Corporation Tax Act 2010, Part 5 is up to date with all changes known to be in force on or before 12 July 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. (See end of Document for details)*

- [<sup>F46</sup>(2A) For the purposes of this section and section 162 a company is a quoted unconnected company if (and only if)—
- (a) its ordinary shares are listed on a recognised stock exchange, and
  - (b) it is not connected with the relevant company.]
- (3) For the purposes of this section and sections 160 and 162 a company (“the candidate company”) is the relevant company's quoted parent company if (and only if)—
- (a) the relevant company is a 75% subsidiary of the candidate company,
  - (b) the candidate company is not a 75% subsidiary of any company, and
  - (c) the candidate company's ordinary shares are listed on a recognised stock exchange.
- (4) [<sup>F47</sup>In the case of a company whose] ordinary share capital is divided into two or more classes, [<sup>F48</sup>subsections (2A)(a) and (3)(c) are] met only if its ordinary shares of each class are listed on a recognised stock exchange.
- (5) In [<sup>F49</sup>this section] “ordinary shares” means shares forming part of ordinary share capital.
- (6) Subsection (7) applies if, in determining under subsection (3)(a) whether the relevant company is a 75% subsidiary of the candidate company, it is necessary to know, for the purposes of subsection (1)(b) or (2)(c) or section 160(4)(c) or 162(2)(c), whether the candidate company is the relevant company's quoted parent company.
- (7) It is to be assumed for those purposes that the candidate company is the relevant company's quoted parent company.

#### Textual Amendments

- F45** Words in s. 164(2)(c) inserted (with effect in accordance with s. 32(7) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 32\(3\)](#)
- F46** S. 164(2A) inserted (with effect in accordance with s. 32(7) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 32\(4\)](#)
- F47** Words in s. 164(4) substituted (with effect in accordance with s. 32(7) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 32\(5\)\(a\)](#)
- F48** Words in s. 164(4) substituted (with effect in accordance with s. 32(7) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 32\(5\)\(b\)](#)
- F49** Words in s. 164(5) substituted (with effect in accordance with s. 32(7) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 32\(6\)](#)

#### <sup>F50</sup>164A Loan forming part of tier two capital

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#### Textual Amendments

- F50** S. 164A repealed (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Taxation of Regulatory Capital Securities Regulations 2013 \(S.I. 2013/3209\), regs. 1\(1\), 12\(a\)\(ii\)](#)

*Status: Point in time view as at 17/07/2014.*

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*Company's entitlement to profits or assets available for distribution: basic provisions*

**165 Proportion of profits available for distribution to which company is entitled**

- (1) This section applies for the purpose of determining the proportion to which a company (“company A”) is, at any time, beneficially entitled of any profits available for distribution to the equity holders of another company (“company B”).
- (2) The proportion is the proportion to which company A would, at that time, be beneficially entitled on a distribution in money to the equity holders of company B (“the profit distribution”) of—
  - (a) an amount of profits equal to company B's total profits of the relevant accounting period (see section 168), or
  - (b) if there are no such total profits, profits of £100.
- (3) It does not matter for the purposes of subsection (2) if any of company B's total profits are not actually distributed.
- (4) If company B is non-UK resident, company B's total profits are to be calculated as if it were UK resident.
- (5) For the purposes of the profit distribution, it is to be assumed that no payment is made by way of repayment of share capital or of the principal secured by any loan unless that payment is a distribution.
- (6) Subject to subsection (5), if an equity holder is entitled as such to a payment which (apart from this subsection) would not be a distribution, the equity holder is nevertheless to be treated as entitled to the payment on the profit distribution.

**166 Proportion of assets available for distribution to which company is entitled**

- (1) This section applies for the purpose of determining the proportion to which a company (“company A”) would, at any time, be beneficially entitled of any assets available for distribution to the equity holders of another company (“company B”) on a winding up.
- (2) The proportion is the proportion to which company A would, at that time, be beneficially entitled if company B were to be wound up and on that winding up (“the notional winding up”) the value of assets available for distribution to company B's equity holders were equal to—
  - (a) the assets amount minus the liabilities amount, or
  - (b) if the assets amount does not exceed the liabilities amount or if company B's balance sheet is prepared to a date other than the end of the relevant accounting period (see section 168), £100.
- (3) The “assets amount” is the amount of company B's assets as shown in its balance sheet as at the end of the relevant accounting period.
- (4) The “liabilities amount” is the amount of company B's liabilities as shown in that balance sheet but excluding liabilities to equity holders as such.
- (5) If, on the notional winding up, an equity holder would be entitled as such to an amount of assets which (apart from this subsection) would not be a distribution of assets, the equity holder is nevertheless treated as entitled to the amount on the distribution of assets on the notional winding up.

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- (6) Subsection (7) applies if—
- (a) an equity holder (“E”) of company B provided new consideration for any shares or securities in company B in relation to which E is an equity holder,
  - (b) company B makes a loan to E or any person connected with E or acquires shares or securities in E or any person so connected, and
  - (c) in making that loan or acquiring those shares or securities, company B applies, directly or indirectly, an amount (“the returned amount”) corresponding to the whole or any part of the new consideration.
- (7) The following amounts are to be reduced by the returned amount—
- (a) the assets amount, and
  - (b) the amount of assets to which E is beneficially entitled on the notional winding up.

**Modifications etc. (not altering text)**

C17 S. 166 modified by 2007 c. 3, s. 257MV(9) (as inserted (17.7.2014) by Finance Act 2014 (c. 26), Sch. 11 para. 1)

**167 Profits or assets available for distribution and entitlement: supplementary**

- (1) References to profits or assets available for distribution to equity holders of a company do not include references to any profits or assets available for distribution to any equity holder otherwise than as an equity holder.
- (2) References to a company being beneficially entitled to profits or assets are references to the company being so entitled—
  - (a) directly,
  - (b) through another company or other companies, or
  - (c) partly directly and partly through another company or other companies.
- (3) If a person is an equity holder in relation to shares or securities as a result of section 159, that person (and no other) is to be treated as being beneficially entitled to any distribution of profits or assets attributable to those shares or securities.

**168 Meaning of “the relevant accounting period”**

- (1) For the purpose of determining the proportion of profits or assets to which company A would be beneficially entitled as mentioned in section 165(2) or 166(2) at any time, “the relevant accounting period” is the accounting period of company B in which that time falls.
- (2) If company B is non-UK resident and is not within the charge to corporation tax, the relevant accounting period is to be determined using the assumption in subsection (3).
- (3) The assumption is that company B became UK resident (and, therefore, within the charge to corporation tax) at the time it became a 75% subsidiary (as mentioned in section 136) ignoring section 151(4).

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*Company's entitlement to profits or assets available for distribution: supplementary*

## 169 Application and interpretation of sections 170 to 182

(1) Sections 170 to 182 apply for the purpose of determining the proportion of profits or assets to which company A would be beneficially entitled as mentioned in section 165(2) or 166(2) at any time.

(2) In those sections—

[<sup>F51</sup>“arrangements”—

- (a) means arrangements of any kind (whether or not in writing), but
- (b) does not include a condition or requirement imposed by, or agreed with, a Minister of the Crown, the Scottish Ministers, a Northern Ireland department or a statutory body,]

“company A's proportion” means the proportion of profits or assets to which company A would be beneficially entitled as mentioned in section 165(2) or 166(2) at the relevant time,

“distribution rights” means rights in relation to dividends or interest or assets on a winding up,

“the participating equity holders”, in relation to the determining of company A's proportion, means the equity holders of company B—

- (a) to whom the profit distribution would be made, or
- (b) who would be entitled to participate in the notional winding up, and

“the relevant time” means the time mentioned in subsection (1) when the beneficial entitlement of company A is to be determined.

[<sup>F52</sup>(3) In subsection (2) “statutory body” means a body (other than a company as defined by section 1(1) of the Companies Act 2006) established by or under a statutory provision for the purpose of carrying out functions conferred on it by or under a statutory provision, except that the Treasury may, by order, specify that a body is or is not to be a statutory body for this purpose.]

### Textual Amendments

**F51** Words in s. 169(2) substituted (with effect in accordance with s. 40(4) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 40\(2\)\(a\)](#)

**F52** S. 169(3) inserted (with effect in accordance with s. 40(4) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 40\(2\)\(b\)](#)

## 170 Shares or securities with limited rights

(1) This section applies if, at the relevant time, one or more of the participating equity holders holds, as such, shares or securities with distribution rights that are limited (wholly or partly) by reference to a specified amount or amounts.

(2) Determine what company A's proportion would be if all those distribution rights were waived so far as they are so limited.

The result is referred to as “the alternative proportion”.



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- (3) If the alternative proportion is less than what company A's proportion would be ignoring this section, then company A's proportion is taken to be the alternative proportion.
- (4) Subsection (3) is subject to sections 175, 176, 178 and 180.
- (5) For the purposes of subsection (1) a limitation on a right may operate—
  - (a) by specifying the capital or amount of profits by reference to which a distribution is calculated, or
  - (b) in any other way.
- (6) But in a case to which section 180 applies (see section 179), limitations that are covered by Case 1 in section 179 are ignored for the purposes of subsection (1).

### **171 Shares or securities with temporary rights**

- (1) Section 172 applies if, at the relevant time, one or more of the participating equity holders holds, as such, shares or securities—
  - (a) which have rights within subsection (2), or
  - (b) in relation to which arrangements within subsection (3) are in place.
- (2) The rights within this subsection are distribution rights of such a kind that if—
  - (a) the profit distribution were to be made, or
  - (b) the notional winding up were to occur,at a time after the relevant accounting period, the equity holder's entitlement at that time would be different from the equity holder's entitlement at the relevant time.
- (3) The arrangements within this subsection are arrangements of such a kind that if—
  - (a) effect were to be given to the arrangements, and
  - (b) the profit distribution were to be made, or the notional winding up were to occur, at a time after the relevant accounting period,then, as a result of effect being given to the arrangements, the equity holder's entitlement at that time would be different from the equity holder's entitlement at the relevant time.
- (4) The references in subsections (2) and (3) to the equity holder's entitlement at a time are references to the proportion to which the equity holder would be beneficially entitled (as the case may be)—
  - (a) of profits on the profit distribution if it were made at that time, or
  - (b) of assets on the notional winding up if it occurred at that time.

### **172 Company A's proportion if shares etc have temporary rights**

- (1) If this section applies, determine what company A's proportion would be if the rights of all participating equity holders at the relevant time were the same as what they would be at the relevant future time.

The result is referred to as “the alternative proportion”.
- (2) For the purposes of subsection (1)—
  - (a) “the relevant future time” means the time after the relevant accounting period mentioned in subsection (2) or (3) of section 171 (as the case may be), and

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- (b) assume that effect is given to all arrangements (if any) within subsection (3) of that section.
- (3) If the alternative proportion is less than what company A's proportion would be ignoring this section, then company A's proportion is taken to be the alternative proportion.
- (4) Subsection (3) is subject to sections 175, 177, 178 and 180.

### 173 Cases in which option arrangements are in place

- (1) Section 174 applies if option arrangements are in place at the relevant time.
- (2) “Option arrangements” means arrangements in relation to which conditions A and B are met [<sup>F53</sup>(but see sections 174A and 174B)].
- (3) Condition A is that the effect of the arrangements is that there could be a change in—
  - (a) the proportion of profits to which any of the participating equity holders would be beneficially entitled on the profit distribution if it were made at a time after the relevant time, or
  - (b) the proportion of assets to which any of the participating equity holders would be beneficially entitled on the notional winding up if it occurred at a time after the relevant time.
- (4) Condition B is that, under the arrangements, the change could result from the exercise of—
  - (a) a right to acquire ordinary shares in company B (see section 160) or securities in company B, or
  - (b) a right to require a person to acquire such shares or securities.
- (5) For the purposes of subsection (4)—
  - (a) it does not matter whether or not the shares or securities were issued before the arrangements were put in place,
  - (b) “right” does not include a right within subsection (6), and
  - (c) “securities” does not include normal commercial loans (as defined by section 162).
- (6) A right is within this subsection if it—
  - (a) is a right of an individual to acquire shares,
  - (b) was obtained because of the individual's office or employment as a director or employee of company B, and
  - (c) was obtained in accordance with a share option scheme at a time when the scheme was an approved share option scheme.
- (7) In subsection (6)(c)—
  - “share option scheme” means—
    - (a) an SAYE option scheme within the meaning of the SAYE code (see section 516(4) of ITEPA 2003), or
    - (b) a CSOP scheme within the meaning of the CSOP code (see section 521(4) of ITEPA 2003), and
  - “approved” means—
    - (a) in relation to an SAYE option scheme, approved under Schedule 3 to ITEPA 2003, and

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- (b) in relation to a CSOP scheme, approved under Schedule 4 to ITEPA 2003.

#### Textual Amendments

**F53** Words in s. 173(2) inserted (with effect in accordance with art. 15 of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2012 \(S.I. 2012/266\)](#), arts. 1, **14(2)**

### 174 Company A's proportion if option arrangements in place

- (1) If this section applies, take the following steps.

#### *Step 1*

Identify all option rights under the option arrangements (or sets of arrangements if more than one) which exist at the relevant time but which have not become effective at or before that time. "Option rights" means rights of the kind mentioned in section 173(4)(a) or (b), and such a right becomes "effective" when the shares or securities to which it relates are acquired as a result of its exercise.

#### *Step 2*

Identify each possible state of affairs that could subsist at the relevant time if the option rights identified at Step 1, or any of them or any combination of them, became effective at that time. For this purpose it does not matter if an option right cannot actually become effective at or before the relevant time.

#### *Step 3*

Take each state of affairs identified at Step 2 and—

- (a) identify what the rights and duties of the participating equity holders would be at the relevant time if the state of affairs were to subsist at that time, and
- (b) determine what company A's proportion would be if those rights and duties were the rights and duties of the participating equity holders at the relevant time.

#### *Step 4*

Identify the lowest proportion determined under paragraph (b) of Step 3. That proportion is referred to as "the alternative proportion".

- (2) If the alternative proportion is less than what company A's proportion would be ignoring this section, then company A's proportion is taken to be the alternative proportion.
- (3) Subsection (2) is subject to sections 176 to 178 and 180.

### <sup>F54</sup>174A Certain option arrangements not within section 173

- (1) Arrangements entered into by a joint venture company which, apart from this section, would be option arrangements within section 173 are not to be treated as such arrangements if and so long as—
- (a) the arrangements are within subsection (2), and
  - (b) none of the contingencies mentioned in subsection (3) to which the arrangements relate has occurred.

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- (2) Arrangements are within this subsection if they are—
- (a) an agreement which provides for the transfer of shares or securities in the joint venture company to one or more members of that company on, or as a result of, one or more contingencies mentioned in subsection (3) occurring, or
  - (b) a provision in a constitutional document of the joint venture company which provides for the suspension of a member’s voting rights on, or as a result of, one or more of those contingencies occurring.
- (3) The contingencies referred to in subsections (1)(b) and (2) are—
- (a) the voluntary departure of a member,
  - (b) the commencement of the liquidation, administration, administrative receivership or receivership of, or the entering into of a voluntary arrangement by, a member under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 or the commencement, or entering into, of equivalent proceedings or arrangements under the law of any country or territory outside the United Kingdom,
  - (c) a serious deterioration in the financial condition of a member,
  - (d) a change of control of a member,
  - (e) a default by a member in performing its obligations under any agreement between the members or with the joint venture company (which, for this purpose, includes any constitutional document of the joint venture company),
  - (f) an external change in the commercial circumstances in which the joint venture company operates such that its viability is threatened,
  - (g) an unresolved disagreement between members, and
  - (h) any contingency of a similar kind to that mentioned in any of paragraphs (a) to (g) which is provided for, but not intended to happen, when the option arrangements in question are entered into.
- (4) This section does not apply if a member could alone or together with connected persons dictate the terms or timing of—
- (a) the transfer of shares or securities, or
  - (b) the suspension of a member’s voting rights,
- in advance of one or more of the contingencies occurring.
- (5) For the purposes of subsection (4) members are not connected with each other by reason only of their membership of the joint venture company.
- (6) In this section—
- “connected” has the same meaning as in section 1122;
- “constitutional document” means a memorandum of association, articles of association or any other similar document regulating the affairs of the joint venture company;
- “joint venture company” means a company which—
- (a) has two or more member companies, and
  - (b) carries on a commercial activity governed by an agreement regulating the affairs of its members;
- “member” means a holder of shares or securities in the joint venture company.

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#### Textual Amendments

**F54** Ss. 174A, 174B inserted (with effect in accordance with art. 15 of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2012 \(S.I. 2012/266\)](#), arts. 1, **14(1)**

### 174B Certain mortgage arrangements not within section 173

- (1) Arrangements entered into by a company which, apart from this section, would be option arrangements within section 173 are not to be treated as such arrangements if and so long as—
  - (a) the arrangements are a mortgage, secured by way of shares or securities in the company, which on default or the happening of any other event allows the mortgagee to exercise its rights against the mortgagor, and
  - (b) the mortgagee has not exercised its rights against the mortgagor.
- (2) This section does not apply if the mortgagee—
  - (a) possesses greater rights in respect of the shares or securities which are the subject of the mortgage than it requires to protect its interest as mortgagee, or
  - (b) could alone or together with connected persons dictate the terms or timing of the default or the happening of any other event which allows it to exercise its rights against the mortgagor.
- (3) For the purposes of subsection (2)(b) the mortgagee is not by reason only of the mortgage connected with a company whose shares or securities are the subject of the mortgage.
- (4) In this section—

“connected” has the same meaning as in section 1122;

“mortgage” means—

  - (a) in England and Wales, and Northern Ireland, any legal or equitable charge, and
  - (b) in Scotland, any right in security,

(and section 1166(1) (definition of “mortgage”: Scotland) does not apply).]

#### Textual Amendments

**F54** Ss. 174A, 174B inserted (with effect in accordance with art. 15 of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2012 \(S.I. 2012/266\)](#), arts. 1, **14(1)**

### 175 Cases in which both sections 170 and 172 apply

- (1) This section applies in a case in which sections 170 and 172 apply but section 174 does not.
- (2) Determine what company A's proportion would be—
  - (a) on the basis mentioned in section 170(2),
  - (b) on the basis mentioned in section 172(1),
  - (c) on those bases taken together, and
  - (d) ignoring sections 170 and 172.

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- (3) Company A's proportion is taken to be the lowest proportion determined under subsection (2).

#### **176 Cases in which both sections 170 and 174 apply**

- (1) This section applies in a case in which sections 170 and 174 apply but section 172 does not.
- (2) Determine what company A's proportion would be—
- (a) on the basis mentioned in section 170(2),
  - (b) on the basis mentioned at Step 4 in section 174,
  - (c) on those bases taken together, and
  - (d) ignoring sections 170 and 174.
- (3) Company A's proportion is taken to be the lowest proportion determined under subsection (2).

#### **177 Cases in which both sections 172 and 174 apply**

- (1) This section applies in a case in which sections 172 and 174 apply but section 170 does not.
- (2) Determine what company A's proportion would be—
- (a) on the basis mentioned in section 172(1),
  - (b) on the basis mentioned at Step 4 in section 174,
  - (c) on those bases taken together, and
  - (d) ignoring sections 172 and 174.
- (3) Company A's proportion is taken to be the lowest proportion determined under subsection (2).

#### **178 Cases in which sections 170, 172 and 174 all apply**

- (1) This section applies in a case in which sections 170, 172 and 174 all apply.
- (2) Determine what company A's proportion would be—
- (a) on the basis mentioned in section 170(2),
  - (b) on the basis mentioned in section 172(1),
  - (c) on the basis mentioned at Step 4 in section 174,
  - (d) on the bases mentioned in sections 170(2) and 172(1) taken together,
  - (e) on the bases mentioned in section 170(2) and at Step 4 in section 174 taken together,
  - (f) on the bases mentioned in section 172(1) and at Step 4 in section 174 taken together,
  - (g) on the bases mentioned in section 170(2), section 172(1) and at Step 4 in section 174 taken together, and
  - (h) ignoring sections 170, 172 and 174.
- (3) Company A's proportion is taken to be the lowest proportion determined under subsection (2).

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## **179 Cases in which surrendering or claimant company is non-UK resident**

- (1) If the surrendering company or the claimant company is non-UK resident at the relevant time, section 180 applies as mentioned in subsections (2) and (3) in the cases set out in subsection (4).
- (2) Section 180 applies in the application of this Chapter for the purposes of sections 143(3)(b) and (c) and 144(3)(b) and (c) if the non-UK resident company is owned by the consortium at the relevant time.
- (3) Section 180 applies in the application of this Chapter for the purposes of section 151(4) (a) and (b) in determining if the non-UK resident company is a 75% or 90% subsidiary of another company at the relevant time.

But section 180 is not to be applied in determining if the EEA group condition is met (see section 136) at the relevant time.

- (4) The cases in which section 180 applies are as follows.

### *Case 1*

One or more of the participating equity holders holds, as such, shares or securities with distribution rights that have effect (wholly or partly) by reference to whether or not, or to what extent, the profits or assets distributed are referable to company B's UK trade (see section 182).

### *Case 2*

Section 174 applies and any of the proportions to be determined under paragraph (b) of Step 3 in that section would differ according to whether or not, or to what extent, the profits or assets distributed are referable to company B's UK trade.

## **180 Company A's proportion if non-UK resident involved**

- (1) If this section applies—
  - (a) go to subsection (2) if the case is one in which none of sections 170, 172 and 174 applies, and
  - (b) go to subsection (3) if the case is one in which any of sections 170, 172, and 174 applies.
- (2) If the case is as mentioned in subsection (1)(a)—
  - (a) determine what company A's proportion would be using the assumptions set out in section 181, and
  - (b) if the proportion so determined (“the alternative proportion”) is less than what company A's proportion would be ignoring this section, then company A's proportion is taken to be the alternative proportion.
- (3) If the case is as mentioned in subsection (1)(b), take the following steps.

### *Step 1*

Determine, in each way required by the applicable sections, what company A's proportion would be ignoring this section. A proportion determined at this step is referred to as a “normal proportion”.

### *Step 2*

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Determine, in each way required by the applicable sections, what company A's proportion would be using the assumptions set out in section 181. A proportion determined at this step is referred to as a “section 181 proportion”.

*Step 3*

If a section 181 proportion determined in a required way is less than the normal proportion determined in that way, for the purposes of the applicable sections use the section 181 proportion instead of the normal proportion.

- (4) In subsection (3) “the applicable sections” means any of sections 170, 172 and 174 that applies in the case mentioned in subsection (1)(b), together with whichever (if any) of sections 175 to 178 that applies in that case.

## **181 Assumptions to be applied if non-UK resident company involved**

- (1) The assumptions referred to in section 180 are as follows.

*Assumption 1*

The profit distribution or the distribution on the notional winding up is confined to a distribution of the profits or assets referable to company B's UK trade (see section 182).

*Assumption 2*

Section 165(2) (in the case of a profit distribution) is applied on the basis that the amount of company B's total profits referred to in that subsection does not exceed the amount of those profits referable to its UK trade.

*Assumption 3*

Section 166(3) and (4) (in the case of a distribution on a notional winding up) is applied on the basis that the amount of company B's assets and liabilities referred to in those subsections does not exceed the amount of those assets and liabilities referable to its UK trade.

*Assumption 4*

None of the ordinary equity holders has a beneficial entitlement to the profits or assets referable to company B's UK trade that is greater than the proportion of the distribution in question to which the equity holder would be beneficially entitled—

- (a) if Assumptions 1 to 3 were ignored, and
- (b) if it would otherwise be less, the distribution were £100.

- (2) In subsection (1) “ordinary equity holder” means an equity holder whose beneficial entitlement on the profit distribution or the distribution on the notional winding up does not differ according to whether or not, or the extent to which, the profits or assets distributed are referable to company B's UK trade.

## **182 Assets etc referable to UK trade**

Profits, assets or liabilities of company B are referable to company B's UK trade so far as they—

- (a) are attributable to, or used for the purposes of, activities the income or chargeable gains from which are or (if there were any) would be brought into account in calculating company B's total profits of any accounting period, and



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- (b) are not attributable to, or used for the purposes of, activities which are double taxation exempt for any accounting period (see section 186).

## CHAPTER 7

### MISCELLANEOUS PROVISIONS AND INTERPRETATION OF PART

#### *Miscellaneous*

#### **183 Payments for group relief**

- (1) This section applies if—
  - (a) the surrendering company and the claimant company have an agreement between them in relation to losses and other amounts of the surrendering company (“the agreed loss amounts”),
  - (b) group relief is given to the claimant company in relation to the agreed loss amounts, and
  - (c) as a result of the agreement the claimant company makes a payment to the surrendering company that does not exceed the total amount of the agreed loss amounts.
- (2) The payment—
  - (a) is not to be taken into account in determining the profits or losses of either company for corporation tax purposes, and
  - (b) for corporation tax purposes is not to be regarded as a distribution.

#### **184 References to “allowance” in CAA 2001**

References in CAA 2001 (apart from Parts 6 and 10) to an allowance include references to an allowance which would be made—

- (a) but for the giving of group relief, or
- (b) but for that and for a lack of profits or other income.

#### *Interpretation*

#### **185 “Trading company” and “holding company”**

- (1) In this Part “trading company” means a company the business of which consists wholly or mainly in the carrying on of a trade or trades.
- (2) In this Part “holding company” means a company the business of which consists wholly or mainly in the holding of shares or securities of companies that—
  - (a) are its 90% subsidiaries (see section 151), and
  - (b) are trading companies.

#### **186 When activities of a company are double taxation exempt**

- (1) For the purposes of this Part activities of a company are double taxation exempt for an accounting period if, because of double taxation arrangements, the income and

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chargeable gains (if any) arising for that period from the activities are to be ignored in determining the company's chargeable profits for that period.

- (2) In determining if any activities are double taxation exempt, assume that any claim that must be made before effect is given to any provision of double taxation arrangements is made.
- (3) “Double taxation arrangements” means arrangements which have effect under section 2(1) of TIOPA 2010 (double taxation relief by agreement with territories outside the United Kingdom).

### 187 “Non-UK tax”

- (1) In this Part “non-UK tax” means a tax chargeable under the law of a territory outside the United Kingdom which—
  - (a) is charged on income and corresponds to United Kingdom income tax, or
  - (b) is charged on income or chargeable gains or both and corresponds to United Kingdom corporation tax.
- (2) A tax is not outside the scope of subsection (1) by reason only that it—
  - (a) is chargeable under the law of a province, state or other part of a country, or
  - (b) is levied by or on behalf of a municipality or other local body.

### 188 Other definitions

- (1) In this Part—
  - “the claimant company” has the meaning given by section 130(2) or 135(2) (as the case may be),
  - “the claim period” has the meaning given by section 130(2) or 135(2) (as the case may be),
  - “company” means any body corporate<sup>F55</sup>(except in [<sup>F56</sup>sections 156(2A) and 169(3)]),
  - “group relief” has the meaning given by section 97(2),
  - “profits” means income and chargeable gains, except in so far as the context otherwise requires,
  - “the surrenderable amounts” has the meaning given by section 99(7) or 113(5) (as the case may be),
  - “surrendering company” has the meaning given by section 99(7) or 113(5) (as the case may be), and
  - “the surrender period” has the meaning given by section 99(7) or 113(5) (as the case may be).
- (2) In this Part, except in so far as the context otherwise requires—
  - (a) references to a trade include an office, and
  - (b) references to carrying on a trade include holding an office.

#### Textual Amendments

**F55** Words in s. 188(1) inserted (with effect in accordance with s. 31(4) of the amending Act) by [Finance Act 2013 \(c. 29\), s. 31\(3\)](#)

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**F56** Words in s. 188(1) substituted (with effect in accordance with s. 40(4) of the amending Act) by Finance Act 2014 (c. 26), s. 40(3)

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**Changes to legislation:**

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