SCHEDULES

SCHEDULE 10

COMPANY CEASING TO BE MEMBER OF GROUP

Degrouping

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

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

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

(4) For subsection (2) substitute—

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

(2ZA) Condition A is that the companies—

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

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

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

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

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

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

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

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

(6) After subsection (3) insert—

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

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

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

(ii) two or more such disposals,

(b) either—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) For subsection (5) substitute—

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

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

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

(8) In subsection (6)—

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

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

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

(10) After that subsection insert—

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

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

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

(ii) two or more such disposals,

(b) either—

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

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

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

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

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

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

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

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

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

(13) After that subsection insert—

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

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

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