



Income and Corporation Taxes Act 1970

1970 CHAPTER 10

PART XI

COMPANY TAXATION

CHAPTER II

COMPANIES' CAPITAL GAINS

Groups of companies

272 Groups of companies: definitions

- (1) For the purposes of this and the following sections of this Chapter—
- (a) references to a company, subject to section 280(7) below, apply only to a company, as that expression is limited by subsection (2) below, which is resident in the United Kingdom;
 - (b) a principal company, and all its 75 per cent. subsidiaries form a group, and where a principal company is a member of a group as being itself a 75 per cent. subsidiary that group shall comprise all its 75 per cent. subsidiaries;
 - (c) " principal company " means a company of which another company is a 75 per cent. subsidiary;
 - (d) in applying the definition of " 75 per cent. subsidiary " in section 532 of this Act any share capital of a registered industrial and provident society shall be treated as ordinary share capital; and
 - (e) " group " and " subsidiary " shall be construed with any necessary modifications where applied to a company incorporated under the law of a country outside the United Kingdom.
- (2) For the purposes referred to in subsection (1) above references to a company apply only to—

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- (a) a company within the meaning of the Companies Act 1948 or the corresponding enactment in Northern Ireland, and
 - (b) a company which is constituted under any other Act or a Royal Charter or letters patent or (although resident in the United Kingdom) is formed under the law of a country or territory outside the United Kingdom, and
 - (c) a registered industrial and provident society within the meaning of section 340 of this Act.
- (3) For the purposes referred to in subsection (1) above a group remains the same group so long as the same company remains the principal company of the group, and if at any time the principal company of a group becomes a 75 per cent. subsidiary of another company the group of which it was the principal company before that time shall be regarded as the same as the group of which that other company, or one of which it is a 75 per cent. subsidiary, is the principal company, and the question whether or not a company has ceased to be a member of a group shall be determined accordingly.
- (4) For the purposes referred to in subsection (1) above the passing of a resolution or the making of an order, or any other act, for the winding-up of a company shall not be regarded as the occasion of that company, or of any 75 per cent. subsidiary of that company, ceasing to be a member of a group of companies.
- (5) The following sections of this Chapter, except in so far as they relate to recovery of tax, shall also have effect in relation to bodies from time to time established by or under any enactment for the carrying on of any industry or part of an industry, or of any undertaking, under national ownership or control as if they were companies within the meaning of those sections, and as if any such bodies charged with related functions (and in particular the Boards and Holding Company established under the Transport Act 1962 and the new authorities within the meaning of the Transport Act 1968 established under that Act of 1968) and subsidiaries of any of them formed a group, and as if also any two or more such bodies charged at different times with the same or related functions were members of a group:
- Provided that this subsection shall have effect subject to any enactment by virtue of which property, rights, liabilities or activities of one such body fall to be treated for corporation tax as those of another, including in particular any such enactment in Chapter V of Part XII of this Act.
- (6) The following sections of this Chapter, except in so far as they relate to recovery of tax, shall also have effect in relation to the Executive for a designated area within the meaning of section 9 (1) of the Transport Act 1968 as if that Executive were a company within the meaning of those sections.

273 Transfers within a group

- (1) Notwithstanding any provision in Part III of the Finance Act 1965 fixing the amount of the consideration deemed to be received on a disposal or given on an acquisition, where a member of a group of companies disposes of an asset to another member of the group, both members shall, except as provided by subsections (2) and (3) below, be treated, so far as relates to corporation tax on chargeable gains, as if the asset acquired by the member to whom the disposal is made were acquired for a consideration of such amount as would secure that on the other's disposal neither a gain nor a loss would accrue to that other; but where it is assumed for any purpose that a member of a group of companies has sold or acquired an asset, it shall be assumed also that it was not a sale to or acquisition from another member of the group.

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- (2) Subsection (1) above shall not apply where the disposal is—
- (a) a disposal of a debt due from a member of a group of companies effected by satisfying the debt or part of it; or
 - (b) a disposal of redeemable shares in a company on the occasion of their redemption ;
- and the reference in that subsection to a member of a group of companies disposing of an asset shall not apply to anything which under Schedule 7 to the Finance Act 1965 is to be treated as a disposal of an interest in shares in a company in consideration for a capital distribution (as defined in paragraph 3 of that Schedule) from that company, whether or not involving a reduction of capital.
- (3) For the purposes of subsection (1) above, so far as the consideration for the disposal consists of money or money's worth by way of compensation for any kind of damage or injury to assets, or for the destruction or dissipation of assets or for anything which depreciates or might depreciate an asset, the disposal shall be treated as being to the person who, whether as an insurer or otherwise, ultimately bears the burden of furnishing that consideration.

274 Transfers within a group: trading stock

- (1) Where a member of a group of companies acquires an asset as trading stock from another member of the group, and the asset did not form part of the trading stock of any trade carried on by the other member, the member acquiring it shall be treated for purposes of paragraph 1 of Schedule 7 to the Finance Act 1965 as having acquired the asset otherwise than as trading stock and immediately appropriated it for the purposes of the trade as trading stock.
- (2) Where a member of a group of companies disposes of an asset to another member of the group, and the asset formed part of the trading stock of a trade carried on by the member disposing of it but is acquired by the other member otherwise than as trading stock of a trade carried on by it, the member disposing of the asset shall be treated for purposes of paragraph 1 of Schedule 7 to the Finance Act 1965 as having immediately before the disposal appropriated the asset for some purpose other than the purpose of use as trading stock.

275 Disposal or acquisition outside a group

- (1) Where a company which is or has been a member of a group of companies disposes of an asset which it acquired from another member of the group at a time when both were members of the group, paragraph 6 of Schedule 6 to the Finance Act 1965 (restriction of losses by reference to capital allowances) shall apply in relation to any capital allowances made to the other member (so far as not taken into account in relation to a disposal of the asset by that other member), and so on as respects previous transfers of the asset between members of the group (but this shall not be taken as affecting the consideration for which an asset is deemed under section 273(1) above to be acquired).
- (2) Part II of Schedule 6 to the Finance Act 1965 (assets acquired before 6th April 1965) shall apply in relation to a disposal of an asset by a company which is or has been a member of a group of companies, and which acquired the asset from another member of the group at a time when both were members of the group, as if all members of the group for the time being were the same person, and as if the acquisition or provision

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of the asset by the group, so taken as a single person, had been the acquisition or provision of it by the member disposing of it.

276 Replacement of business assets by members of a group

- (1) For the purposes of section 33 of the Finance Act 1965 (replacement of business assets) all the trades carried on by members of a group of companies shall be treated as a single trade (unless it is a case of one member of the group acquiring, or acquiring the interest in, the new assets from another or disposing of, or of the interest in, the old assets to another).
- (2) Paragraph 16(2) of Schedule 19 to the Finance Act 1969 (special rules for depreciating assets) shall apply where the company making the claim is a member of a group of companies as if all members of the group for the time being were the same person (and, in accordance with subsection (1) above, as if all trades carried on by members were the same trade) and so that the gain shall accrue to the member of the group holding the asset concerned on the occurrence of the event mentioned in the said paragraph 16(2).

277 Tax on company recoverable from other members of group

- (1) If at any time a chargeable gain accrues to a company which at that time is a member of a group of companies and any of the corporation tax assessed on the company for the accounting period in which the chargeable gain accrues is not paid within six months from the date when it becomes payable by the company, then, if the tax so assessed included any amount in respect of chargeable gains.—
 - (a) a company which was at the time when the gain accrued the principal company of the group ; and
 - (b) any other company which in any part of the period of two years ending with that time was a member of the said group of companies and owned the asset disposed of or any part of it, or where that asset is an interest or right in or over another asset, owned either asset or any part of either asset;

may at any time within two years from the time when the tax became payable be assessed and charged (in the name of the company to whom the chargeable gain accrued) to an amount of that corporation tax not exceeding corporation tax on the amount of that gain at the rate in force when the gain accrued.
- (2) A company paying any amount of tax under subsection (1) above shall be entitled to recover a sum of that amount—
 - (a) from the company to which the chargeable gain accrued, or
 - (b) if that company is not the company which was the principal company of the group at the time when the chargeable gain accrued, from that principal company,

and a company paying any amount under paragraph (b) above shall be entitled to recover a sum of that amount from the company to which the chargeable gain accrued, and so far as it is not so recovered, to recover from any company which is for the time being a member of the group and which has while a member of the group owned the asset disposed of or any part of it (or where that asset is an interest or right in or over another asset, owned either asset or any part of it) such proportion of the amount unrecovered as is just having regard to the value of the asset at the time when the asset, or an interest or right in or over it, was disposed of by that company.

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278 Company ceasing to be member of a group

(1) If a company (in this section called the chargeable company) ceases to be a member of a group of companies, this section shall have effect as respects any asset which the chargeable company acquired from another company which was at the time of acquisition a member of that group of companies, but only if the time of acquisition fell—

- (a) on or after 6th April 1965, and
- (b) within the period of six years ending with the time when the company ceases to be a member of the group;

and references in this section to a company ceasing to be a member of a group of companies do not apply to cases where a company ceases to be a member of a group by being wound up or dissolved or in consequence of another member of the group being wound up or dissolved.

(2) Where two or more associated companies cease to be members of the group at the same time, subsection (1) above shall not have effect as respects an acquisition by one from another of those associated companies.

(3) If, when the chargeable company ceases to be a member of the group, the chargeable company, or an associated company also leaving the group, owns, otherwise than as trading stock—

- (a) the asset, or
- (b) property to which a chargeable gain has been carried forward from the asset on a replacement of business assets,

the chargeable company shall be treated for all the purposes of Part III of the Finance Act 1965 as if immediately after its acquisition of the asset it had sold, and immediately reacquired, the asset at market value at that time.

(4) For the purposes of this section—

- (a) two or more companies are associated companies if, by themselves, they would form a group of companies,
- (b) a chargeable gain is carried forward from an asset to other property on a replacement of business assets if, by one or more claims under section 33 of the Finance Act 1965, the chargeable gain accruing on a disposal of the asset is reduced, and as a result an amount falls to be deducted from the expenditure allowable in computing a gain accruing on the disposal of the other property,
- (c) an asset acquired by the chargeable company shall be treated as the same as an asset owned at a later time by that company or an associated company if the value of the second asset is derived in whole or in part from the first asset, and in particular where the second asset is a freehold, and the first asset was a leasehold and the lessee has acquired the reversion.

(5) If any of the corporation tax assessed on a company in consequence of this section is not paid within six months from the date when it becomes payable then—

- (a) a company which on the said date, or immediately after the chargeable company ceased to be a member of the group, was the principal company of the group, and
- (b) a company which owned the asset on the said date, or when the chargeable company ceased to be a member of the group,

may at any time within two years from the time when the tax became payable, be assessed and charged (in the name of the chargeable company) to all or any part of that

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tax ; and a company paying any amount of tax under this subsection shall be entitled to recover a sum of that amount from the chargeable company.

- (6) Notwithstanding any limitation on the time for making assessments, an assessment to corporation tax chargeable in consequence of this section may be made at any time within six years from the time when the chargeable company ceased to be a member of the group, and where under this section the chargeable company is to be treated as having disposed of, and reacquired, an asset, all such recomputations of liability in respect of other disposals, and all such adjustments of tax, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of the provisions of this section shall be carried out.
- (7) The provision in subsection (3) above making the assumption that an asset is sold and re-acquired at market value shall, in accordance with paragraph 7(1) of Schedule 14 to the Finance Act 1967, have effect subject to the provisions of section 33 of that Act (current use value of land in Great Britain).
- (8) This section has effect, to the exclusion of the corresponding enactments repealed by this Act, where the chargeable company ceases to be a member of the group in an accounting period ending after 5th April 1970, and not only in respect of tax for such an accounting period but also in respect of tax for accounting periods ending on or before that date.

279 Shares in subsidiary member of a group

- (1) This section has effect if a company (in this section called " the subsidiary ") ceases to be a member of a group of companies, and on an earlier occasion shares in the subsidiary were disposed of by another company (in this section called " the chargeable company") which was then a member of that group in the course of an amalgamation or reconstruction in the group, but only if that earlier occasion fell—
 - (a) on or after 6th April 1965, and
 - (b) within the period of six years ending with the date on which the subsidiary ceases to be a member of the group;

and references in this section to a company ceasing to be a member of a group of companies do not apply to cases where a company ceases to be a member of a group by being wound up or dissolved or in consequence of another member of the group being wound up or dissolved.
- (2) The chargeable company shall be treated, for all the purposes of Part III of the Finance Act 1965, as if immediately before the earlier occasion it had sold, and immediately reacquired, the said shares at market value at that time.
- (3) If, before the subsidiary ceases to be a member of the group, the chargeable company has ceased to exist, or a resolution has been passed, or an order made, for the winding up of the company, or any other act has been done for the like purpose, any corporation tax to which, if the chargeable company had continued in existence, it would have been chargeable in consequence of this section may be assessed and charged (in the name of the chargeable company) on the company which is, at the time when the subsidiary ceases to be a member of the group, the principal company of the group.
- (4) If any of the corporation tax assessed on a company in consequence of this section, or in pursuance of subsection (3) above, is not paid within six months from the date when it becomes payable, then—

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- (a) a company which is on the said date, or was on the earlier occasion, the principal company of the group, and
- (b) any company taking an interest in the subsidiary as part of the amalgamation or reconstruction in the group,

may at any time within two years from the time when the tax became payable, be assessed and charged (in the name of the chargeable company) to all or any part of that tax; and a company paying any amount of tax under this subsection shall be entitled to recover a sum of that amount from the chargeable company, or as the case may be from the company assessed under subsection (3) above.

- (5) Notwithstanding any limitation on the time for making assessments, an assessment to corporation tax chargeable in consequence of this section may be made at any time within six years from the time when the subsidiary ceased to be a member of the group and, in relation to any disposal of the property after the earlier occasion, there shall be made all such adjustments of tax, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of the provisions of this section.
- (6) For the purposes of this section there is a disposal of shares in the course of an amalgamation or reconstruction in a group of companies if paragraph 6 or paragraph 7 of Schedule 7 to the Finance Act 1965 (company amalgamations) applies to shares in a company so as to equate them with shares in or debentures of another company, and the companies are members of the same group, or become members of the same group as a result of the amalgamation or reconstruction.
- (7) Where by virtue of paragraph 7 of the said Schedule 7 shares are to be treated as cancelled and replaced by a new issue, references in this section to a disposal of shares include references to the occasion of their being so treated.
- (8) This section has effect, to the exclusion of the corresponding enactments repealed by this Act, where the subsidiary ceases to be a member of the group in an accounting period of the chargeable company (or, as the case may be, of the company assessable under subsection (3) above) ending after 5th April 1970, and not only in respect of tax for such an accounting period but also in respect of tax for accounting periods ending on or before that date.