Taxation of Chargeable Gains Act 1992

1992 CHAPTER 12

PART VI

COMPANIES, OIL, INSURANCE ETC.

CHAPTER I

COMPANIES

Groups of companies

170 Interpretation of sections 171 to 181.

(1) This section has effect for the interpretation of sections 171 to 181 except in so far as the context otherwise requires, and in those sections—

(a) "profits" means income and chargeable gains, and

(b) "trade" includes "vocation", and includes also an office or employment.

Until 6th April 1993 paragraph (b) shall have effect with the addition at the end of the words "or the occupation of woodlands in any context in which the expression is applied to that in the Income Tax Acts".

(2) Except as otherwise provided—

(a) references to a company apply only to a company, as that expression is limited by subsection (9) below, which is resident in the United Kingdom;

(b) subsections (3) to (6) below apply to determine whether companies form a group and, where they do, which is the principal company of the group;

(c) in applying the definition of "75 per cent. subsidiary" in section 838 of the Taxes Act any share capital of a registered industrial and provident society shall be treated as ordinary share capital; and

(d) "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.

(3) Subject to subsections (4) to (6) below—

(a) a company (referred to below and in sections 171 to 181 as the "principal company of the group") and all its 75 per cent. subsidiaries form a group and, if any of those subsidiaries have 75 per cent. subsidiaries, the group includes them and their 75 per cent. subsidiaries, and so on, but

(b) a group does not include any company (other than the principal company of the group) that is not an effective 51 per cent. subsidiary of the principal company of the group.

(4) A company cannot be the principal company of a group if it is itself a 75 per cent. subsidiary of another company.

(5) Where a company ("the subsidiary") is a 75 per cent. subsidiary of another company but those companies are prevented from being members of the same group by subsection (3)(b) above, the subsidiary may, where the requirements of subsection (3) above are satisfied, itself be the principal company of another group notwithstanding subsection (4) above unless this subsection enables a further company to be the principal company of a group of which the subsidiary would be a member.

(6) A company cannot be a member of more than one group; but where, apart from this subsection, a company would be a member of 2 or more groups (the principal company of each group being referred to below as the "head of a group"), it is a member only of that group, if any, of which it would be a member under one of the following tests (applying earlier tests in preference to later tests)—

(a) it is a member of the group it would be a member of if, in applying subsection (3)(b) above, there were left out of account any amount to which a head of a group is or would be beneficially entitled of any profits available for distribution to equity holders of a head of another group or of any assets of a head of another group available for distribution to its equity holders on a winding-up,

(b) it is a member of the group the head of which is beneficially entitled to a percentage of profits available for distribution to equity holders of the company that is greater than the percentage of those profits to which any other head of a group is so entitled,

(c) it is a member of the group the head of which would be beneficially entitled to a percentage of any assets of the company available for distribution to its equity holders on a winding-up that is greater than the percentage of those assets to which any other head of a group would be so entitled,

(d) it is a member of the group the head of which owns directly or indirectly a percentage of the company's ordinary share capital that is greater than the percentage of that capital owned directly or indirectly by any other head of a group (interpreting this paragraph as if it were included in section 838(1)(a) of the Taxes Act).

(7) For the purposes of this section and sections 171 to 181, a company ("the subsidiary") is an effective 51 per cent. subsidiary of another company ("the parent") at any time if and only if—

(a) the parent is beneficially entitled to more than 50 per cent. of any profits available for distribution to equity holders of the subsidiary; and

(b) the parent would be beneficially entitled to more than 50 per cent. of any assets of the subsidiary available for distribution to its equity holders on a winding-up.

(8) Schedule 18 to the Taxes Act (group relief: equity holders and profits or assets available for distribution) shall apply for the purposes of subsections (6) and (7) above as if the references to subsection (7), or subsections (7) to (9), of section 413 of that Act were references to subsections (6) and (7) above and as if, in paragraph 1(4), the words from "but" to the end and paragraphs 5(3) **[**F1and 5B to 5E**]** and 7(1)(b) were omitted.

(9) For the purposes of this section and sections 171 to 181, references to a company apply only to—

(a) a company within the meaning of the M1Companies Act 1985 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 486 of the Taxes Act; and

(d) a building society.

(10) For the purposes of this section and sections 171 to 181, 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 member of another group, the first group and the other group shall be regarded as the same, and the question whether or not a company has ceased to be a member of a group shall be determined accordingly.

(11) For the purposes of this section and sections 171 to 181, the passing of a resolution or the making of an order, or any other act, for the winding-up of a member of a group of companies shall not be regarded as the occasion of that or any other company ceasing to be a member of the group.

(12) Sections 171 to 181, 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 M2Transport Act 1962 and the new authorities within the meaning of the M3Transport Act 1968 established under that Act of 1968) and subsidiaries of any of them formed a group, and as if also any 2 or more such bodies charged at different times with the same or related functions were members of a group.

(13) Subsection (12) 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 VI of Part XII of the Taxes Act.

(14) Sections 171 to 181, 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 M4Transport Act 1968 as if that Executive were a company within the meaning of those sections.

Textual Amendments

F1 Words in s. 170(8) inserted (*retrosp.*) by 1992 c. 48, s. 24, Sch. 6 paras. 5, **10**

Marginal Citations

M1 1985 c. 6.
M2 1962 c. 46.
M3 1968 c. 73.
M4 1968 c. 73.

Transactions within groups

171 Transfers within a group: general provisions.

(1) Notwithstanding any provision in this Act 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.

(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; or

(c) a disposal by or to an investment trust; or

(d) a disposal to a dual resident investing company; or

(e) a disposal to a company which, though resident in the United Kingdom—

(i) is regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom, and

(ii) by virtue of the arrangements would not be liable in the United Kingdom to tax on a gain arising on a disposal of the asset occurring immediately after its acquisition;

and the reference in subsection (1) above to a member of a group of companies disposing of an asset shall not apply to anything which under section 122 is to be treated as a disposal of an interest in shares in a company in consideration for a capital distribution (as defined in that section) from that company, whether or not involving a reduction of capital.

(3) Subsection (1) above shall not apply to a transaction treated by virtue of sections 127 and 135 as not involving a disposal by the company first mentioned in that subsection.

(4) 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.

Modifications etc. (not altering text)

C1 S. 171 excluded (27.7.1993 with application as mentioned in s. 165(1)) by 1993 c. 34, s. 169, **Sch. 17 para. 7(2)(b)**

172 Transfer of United Kingdom branch or agency.

(1) Subject to subsections (3) and (4) below, subsection (2) below applies for the purposes of corporation tax on chargeable gains where—

(a) there is a scheme for the transfer by a company ("company A")—

(i) which is not resident in the United Kingdom, but

(ii) which carries on a trade in the United Kingdom through a branch or agency,

of the whole or part of the trade to a company resident in the United Kingdom ("company B"),

(b) company A disposes of an asset to company B in accordance with the scheme at a time when the 2 companies are members of the same group, and

(c) a claim in relation to the asset is made by the 2 companies within 2 years after the end of the accounting period of company B during which the disposal is made.

(2) Where this subsection applies—

(a) company A and company B shall be treated as if the asset were acquired by company B for a consideration of such amount as would secure that neither a gain nor a loss would accrue to company A on the disposal, and

(b) section 25(3) shall not apply to the asset by reason of the transfer.

(3) Subsection (2) above does not apply where—

(a) company B, though resident in the United Kingdom,—

(i) is regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom, and

(ii) by virtue of the arrangements would not be liable in the United Kingdom to tax on a gain arising on a disposal of the asset occurring immediately after its acquisition, or

(b) company B is either a dual resident investing company or an investment trust.

(4) Subsection (2) above shall not apply unless any gain accruing to company A—

(a) on the disposal of the asset in accordance with the scheme, or

(b) where that disposal occurs after the transfer has taken place, on a disposal of the asset immediately before the transfer,

would be a chargeable gain and would, by virtue of section 10(3), form part of its profits for corporation tax purposes.

(5) In this section "company" and "group" have the meanings which would be given by section 170 if subsections (2)(a) and (9) of that section were omitted.

Modifications etc. (not altering text)
C2 S. 172 excluded (27.7.1993) by 1993 c. 34, ss. 165(1), 169, **Sch. 17 para. 7(2)(b)**

173 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 section 161 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 section 161 as having immediately before the disposal appropriated the asset for some purpose other than the purpose of use as trading stock.

174 Disposal or acquisition outside a group.

(1) Where there is a disposal of an asset acquired in relevant circumstances, section 41 shall apply in relation to capital allowances made to the person from which it was acquired (so far as not taken into account in relation to a disposal of the asset by that person), and so on as respects previous transfers of the asset in relevant circumstances.

(2) In subsection (1) above "relevant circumstances" means circumstances in which section **[**F2140A,**]**171 or 172 applied or in which section 171 would have applied but for subsection (2) of that section.

(3) Subsection (1) above shall not be taken as affecting the consideration for which an asset is deemed under section **[**F2140A,**]** 171 or 172 to be acquired.

(4) Schedule 2 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 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.

(5) Subsection (4) above does not apply where the asset was acquired on a disposal within section 171(2)(c).

Textual Amendments
F2 Words in s. 174(2)(3) inserted (*retrosp.*) by 1992 c. 48, **s. 46(1)(5)(a)(b)**

Modifications etc. (not altering text)
C3 S. 174(1) modified (16.7.1992) by 1992 c. 48, s. 77, Sch. 17 paras. 6(3)(6), **7**

175 Replacement of business assets by members of a group.

(1) Subject to subsection (2) below, for the purposes of sections 152 to 158 all the trades carried on by members of a group of companies shall, for the purposes of corporation tax on chargeable gains, 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) Subsection (1) above does not apply where so much of the consideration for the disposal of the old assets as is applied in acquiring the new assets or the interest in them is so applied by a member of the group which is a dual resident investing company or a company which, though resident in the United Kingdom—

(a) is regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom, and

(b) by virtue of the arrangements would not be liable in the United Kingdom to tax on a gain arising on a disposal of, or of the interest in, the new assets occurring immediately after the acquisition;

and in this subsection "the old assets" and "the new assets" have the same meanings as in section 152.

[[F3](2A) Section 152 shall apply where—

(a) the disposal is by a company which, at the time of the disposal, is a member of a group of companies,

(b) the acquisition is by another company which, at the time of the acquisition, is a member of the same group, and

(c) the claim is made by both companies,

as if both companies were the same person.

(2B) Section 152 shall apply where a company which is a member of a group of companies but is not carrying on a trade—

(a) disposes of assets (or an interest in assets) used, and used only, for the purposes of the trade which (in accordance with subsection (1) above) is treated as carried on by the members of the group which carry on a trade, or

(b) acquires assets (or an interest in assets) taken into use, and used only, for those purposes,

as if the first company were carrying on that trade.

(2C) Section 152 shall not apply if the acquisition of, or of the interest in, the new assets—

(a) is made by a company which is a member of a group of companies, and

(b) is one to which any of the enactments specified in section 35(3)(d) applies.**]**

(3) Section 154(2) 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 section 154(2).

(4) Subsection (2) above shall apply where the acquisition took place before 20th March 1990 and the disposal takes place within the period of 12 months beginning with the date of the acquisition or such longer period as the Board may by notice allow with the omission of the words from "or a company" to "the acquisition".

Textual Amendments

F3 S. 175(2A)-(2C) inserted (retrospectively as respects s. 175(2A), with application in accordance with s. 48(5) of the amending Act as respects s. 175(2B)(2C)) by Finance Act 1995 (c. 4), **s. 48(1)**(3) (with s. 48(4)(5))

Losses attributable to depreciatory transactions

176 Depreciatory transactions within a group.

(1) This section has effect as respects a disposal of shares in, or securities of, a company ("the ultimate disposal") if the value of the shares or securities has been materially reduced by a depreciatory transaction effected on or after 31st March 1982; and for this purpose "depreciatory transaction" means—

(a) any disposal of assets at other than market value by one member of a group of companies to another, or

(b) any other transaction satisfying the conditions of subsection (2) below,

except that a transaction shall not be treated as a depreciatory transaction to the extent that it consists of a payment which is required to be or has been brought into account, for the purposes of corporation tax on chargeable gains, in computing a chargeable gain or allowable loss accruing to the person making the ultimate disposal.

(2) The conditions referred to in subsection (1)(b) above are—

(a) that the company, the shares in which, or securities of which, are the subject of the ultimate disposal, or any 75 per cent. subsidiary of that company, was a party to the transaction, and

(b) that the parties to the transaction were or included 2 or more companies which at the time of the transaction were members of the same group of companies.

(3) Without prejudice to the generality of subsection (1) above, the cancellation of any shares in or securities of one member of a group of companies under section 135 of the [M5]Companies Act 1985 shall, to the extent that immediately before the cancellation those shares or securities were the property of another member of the group, be taken to be a transaction fulfilling the conditions in subsection (2) above.

(4) If the person making the ultimate disposal is, or has at any time been, a member of the group of companies referred to in subsection (1) or (2) above, any allowable loss accruing on the disposal shall be reduced to such extent as appears to the inspector, or, on appeal, the Commissioners concerned, to be just and reasonable having regard to the depreciatory transaction, but if the person making the ultimate disposal is not a member of that group when he disposes of the shares or securities, no reduction of the loss shall be made by reference to a depreciatory transaction which took place when that person was not a member of that group.

(5) The inspector or the Commissioners shall make the decision under subsection (4) above on the footing that the allowable loss ought not to reflect any diminution in the value of the company's assets which was attributable to a depreciatory transaction, but allowance may be made for any other transaction on or after 31st March 1982 which has enhanced the value of the company's assets and depreciated the value of the assets of any other member of the group.

(6) If, under subsection (4) above, a reduction is made in an allowable loss, any chargeable gain accruing on a disposal of the shares or securities of any other company which was a party to the depreciatory transaction by reference to which the reduction was made, being a disposal not later than 6 years after the depreciatory transaction, shall be reduced to such extent as appears to the inspector, or, on appeal, the Commissioners concerned, to be just and reasonable having regard to the effect of the depreciatory transaction on the value of those shares or securities at the time of their disposal, but the total amount of any one or more reductions in chargeable gains made by reference to a depreciatory transaction shall not exceed the amount of the reductions in allowable losses made by reference to that depreciatory transaction.

All such adjustments, whether by way of discharge or repayment of tax, or otherwise, as are required to give effect to the provisions of this subsection may be made at any time.

(7) For the purposes of this section—

(a) "securities" includes any loan stock or similar security whether secured or unsecured,

(b) references to the disposal of assets include references to any method by which one company which is a member of a group appropriates the goodwill of another member of the group, and

(c) a "group of companies" may consist of companies some or all of which are not resident in the United Kingdom.

(8) References in this section to the disposal of shares or securities include references to the occasion of the making of a claim under section 24(2) that the value of shares or securities has become negligible, and references to a person making a disposal shall be construed accordingly.

(9) In any case where the ultimate disposal is not one to which section 35(2) applies, the references above to 31st March 1982 shall be read as references to 6th April 1965.

Modifications etc. (not altering text)
C4 S. 176 modified (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 18(2)**

Marginal Citations
M5 1985 c. 6.

177 Dividend stripping.

(1) The provisions of this section apply where one company ("the first company") has a holding in another company ("the second company") and the following conditions are fulfilled—

(a) that the holding amounts to, or is an ingredient in a holding amounting to, 10 per cent. of all holdings of the same class in the second company,

(b) that the first company is not a dealing company in relation to the holding,

(c) that a distribution is or has been made to the first company in respect of the holding, and

(d) that the effect of the distribution is that the value of the holding is or has been materially reduced.

(2) Where this section applies in relation to a holding, section 176 shall apply, subject to subsection (3) below, in relation to any disposal of any shares or securities comprised in the holding, whether the disposal is by the first company or by any other company to which the holding is transferred by a transfer to which section **[**[F4]140A,**]** 171 or 172 applies, as if the distribution were a depreciatory transaction and, if the companies concerned are not members of a group of companies, as if they were.

(3) The distribution shall not be treated as a depreciatory transaction to the extent that it consists of a payment which is required to be or has been brought into account, for the purposes of corporation tax on chargeable gains, in computing a chargeable gain or allowable loss accruing to the person making the ultimate disposal.

(4) This section shall be construed as one with section 176, and in any case where the ultimate disposal is not one to which section 35(2) applies, the reference in subsection (1)(c) above to a distribution does not include a distribution made before 30th April 1969.

(5) For the purposes of this section a company is "a dealing company" in relation to a holding if a profit on the sale of the holding would be taken into account in computing the company's trading profits.

(6) References in this section to a holding in a company refer to a holding of shares or securities by virtue of which the holder may receive distributions made by the company, but so that—

(a) a company's holdings of different classes in another company shall be treated as separate holdings, and

(b) holdings of securities which differ in the entitlements or obligations they confer or impose shall be regarded as holdings of different classes.

(7) For the purposes of subsection (1) above—

(a) all a company's holdings of the same class in another company are to be treated as ingredients constituting a single holding, and

(b) a company's holding of a particular class shall be treated as an ingredient in a holding amounting to 10 per cent. of all holdings of that class if the aggregate of that holding and other holdings of that class held by connected persons amounts to 10 per cent. of all holdings of that class,

and section 286 shall have effect in relation to paragraph (b) above as if, in subsection (7) of that section, after the words "or exercise control of" in each place where they occur there were inserted the words " or to acquire a holding in ".

Textual Amendments

F4 Words in s. 177(2) inserted (*retrosp.*) by 1992 c. 48, **s. 46(1)(6)**

Modifications etc. (not altering text)

C5 S. 177: modified (27.7.1993 with application as mentioned in s. 165(1)) by 1993 c. 34, s. 169, **Sch. 17 paras. 5(1)**; modified (27.7.1993 with application as mentioned in s. 165(1)) by 1993 c. 34, s. 169, **Sch. 17 paras. 5(3)**; modified (27.7.1993 with application as mentioned in s. 165(1)) by 1993, s. 169, Sch. 17 paras. 6(2); modified (27.7.1993 with applicaton as mentioned in s. 165(1)) by 1993 c. 34, **Sch. 17 paras. 6(3)**

[177A [F5]Restriction on set-off of pre-entry losses.

Schedule 7A to this Act (which makes provision in relation to losses accruing to a company before the time when it becomes a member of a group of companies and losses accruing on assets held by any company at such a time) shall have effect.**]**

Textual Amendments

F5 S. 177A inserted (27.7.1993 with application as mentioned in s. 88(3)) by 1993 c. 34, **s. 88(1)**

Companies leaving groups

178 Company ceasing to be member of group: pre-appointed day cases.

(1) If a company ("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 within the period of 6 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 **[**[F6]in consequence of another member of the group ceasing to exist**]**.

(2) Where 2 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 this Act as if immediately after its acquisition of the asset it had sold, and immediately reacquired, the asset at market value at that time.

(4) Where, apart from subsection (5) below, a company ceasing to be a member of a group by reason only of the fact that the principal company of the group becomes a member of another group would be treated by virtue of subsection (3) above as selling an asset at any time, subsections (5) and (6) below shall apply.

(5) The company in question shall not be treated as selling the asset at that time; but if—

(a) within 6 years of that time the company in question ceases at any time ("the relevant time") to satisfy the following conditions, and

(b) at the relevant time, the company in question, or a company in the same group as that company, owns otherwise than as trading stock the asset or property to which a chargeable gain has been carried forward from the asset on a replacement of business assets,

the company in question shall be treated for all the purposes of this Act as if, immediately after its acquisition of the asset, it had sold and immediately reacquired the asset at the value that, at the time of acquisition, was its market value.

(6) Those conditions are—

(a) that the company is a 75 per cent. subsidiary of one or more members of the other group referred to in subsection (4) above, and

(b) that the company is an effective 51 per cent. subsidiary of one or more of those members.

(7) Where—

(a) by virtue of this section a company is treated as having sold an asset at any time, and

(b) if at that time the company had in fact sold the asset at market value at that time, then, by virtue of section 30, any allowable loss or chargeable gain accruing on the disposal would have been calculated as if the consideration for the disposal were increased by an amount,

subsections (3) and (5) above shall have effect as if the market value at that time had been that amount greater.

(8) For the purposes of this section—

(a) 2 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 sections 152 to 158, 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.

(9) If any of the corporation tax assessed on a company in consequence of this section is not paid within 6 months from the date when it becomes payable then—

(a) a company which on that 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 that date, or when the chargeable company ceased to be a member of the group,

may, at any time within 2 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.

(10) 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 6 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.

Textual Amendments

F6 Words in s. 178(1) substituted (*retrosp.*) by 1992 c. 48, **s. 25(1)**

Modifications etc. (not altering text)

C6 S. 178 excluded (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I paras. 4(1)**
S. 178: modified (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 4(2)**; modified (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 5(2)**

179 Company ceasing to be member of group: post-appointed day cases.

(1) If a company ("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 within the period of 6 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 **[**F7in consequence of another member of the group ceasing to exist**]**.

(2) Where 2 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,

then, subject to subsection (4) below, the chargeable company shall be treated for all the purposes of this Act as if immediately after its acquisition of the asset it had sold, and immediately reacquired, the asset at market value at that time.

(4) Any chargeable gain or allowable loss which, apart from this subsection, would accrue to the chargeable company on the sale referred to in subsection (3) above shall be treated as accruing to the chargeable company **[**F8at whichever is the later of the following, that is to say—

(a) the time immediately after the beginning of the accounting period of that company in which or, as the case may be, at the end of which the company ceases to be a member of the group; and

(b) the time when under subsection (3) above it is treated as having reacquired the asset;

and subsection (2) of section 409 of the Taxes Act (group relief) shall require any apportionment under that subsection to be made accordingly but shall not require any reference in this subsection to an accounting period to have effect for any of the purposes specified in subsection (3) of that section as a reference to any accounting period other than a true accounting period.**]**

(5) Where, apart from subsection (6) below, a company ceasing to be a member of a group by reason only of the fact that the principal company of the group becomes a member

of another group would be treated by virtue of subsection (3) above as selling an asset at any time, subsections (6) to (8) below shall apply.

(6) The company in question shall not be treated as selling the asset at that time; but if—

(a) within 6 years of that time the company in question ceases at any time ("the relevant time") to satisfy the following conditions, and

(b) at the relevant time, the company in question, or a company in the same group as that company, owns otherwise than as trading stock the asset or property to which a chargeable gain has been carried forward from the asset on a replacement of business assets,

the company in question shall be treated for all the purposes of this Act as if, immediately after its acquisition of the asset, it had sold and immediately reacquired the asset at the value that, at the time of acquisition, was its market value.

(7) Those conditions are—

(a) that the company is a 75 per cent. subsidiary of one or more members of the other group referred to in subsection (5) above, and

(b) that the company is an effective 51 per cent. subsidiary of one or more of those members.

(8) Any chargeable gain or allowable loss accruing to the company on that sale shall be treated as accruing at the relevant time.

(9) Where—

(a) by virtue of this section a company is treated as having sold an asset at any time, and

(b) if at that time the company had in fact sold the asset at market value at that time, then, by virtue of section 30, any allowable loss or chargeable gain accruing on the disposal would have been calculated as if the consideration for the disposal were increased by an amount,

subsections (3) and (6) above shall have effect as if the market value at that time had been that amount greater.

(10) For the purposes of this section—

(a) 2 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 sections 152 to 158, 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.

(11) If any corporation tax assessed on a company in consequence of this section is not paid within 6 months from the date determined under subsection (12) below, then—

(a) a company which on that 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 that date, or when the chargeable company ceased to be a member of the group,

may, at any time within 2 years from the date so determined, 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 from the chargeable company a sum of that amount together with any interest paid by the company concerned under section 87A of the Management Act on that amount.

(12) The date referred to in subsection (11) above is whichever is the later of—

(a) the date when the tax becomes due and payable by the company; and

(b) the date when the assessment was made on the chargeable company.

(13) 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.

Textual Amendments

F7 Words in s. 179(1) substituted (*retrosp.*) by 1992, c. 48, s. 25(1)

F8 Words in s. 179(4) substituted (27.7.1993 with effect as mentioned in s. 89(2)) by 1993 c. 34, **s. 89(1)(2)**

Modifications etc. (not altering text)

C7 S. 179 excluded (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 4(1)**
S. 179: modified (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 4(2)**; modified (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 51(2)**

Commencement Information

I1 s. 179: 30.9.1993 appointed for the purposes of s. 179 by S.I. 1992/3066, **art. 2(2)(d)**

180 Transitional provisions.

(1) Subject to the following provisions of this section—

(a) section 178 has effect where the chargeable company referred to in section 178(4) ceases to be a member of the group in an accounting period beginning after 5th April 1992, but shall not apply where section 179 has effect, and

(b) section 179 has effect where the accounting period in which the chargeable company referred to in section 179(5) ceases to be a member of the group ends after such day as the Treasury by order appoint,

and in any case where section 178 or section 179 has effect in respect of tax for any accounting period, that section shall also have effect in respect of tax for earlier accounting periods, to the exclusion of the corresponding enactments repealed by this Act.

(2) Subject to subsection (1) above—

(a) section 178(5) to (7) apply where a company which apart from section 278(3C) of the [M6]Income and Corporation Taxes Act 1970 would by virtue of subsection (3) of that section have been treated as selling an asset

(unless it has already been treated, by virtue of section 278(3C), as if it had sold the asset in question), and

(b) section 179(6) to (9) apply where a company which, apart from section 278(3C) of the [M7]Income and Corporation Taxes Act 1970 or section 178(4) of this Act, would by virtue of section 278(3) or section 178(3) have been treated as selling an asset (unless it has already been treated, by virtue of section 278(3C) or section 178(4), as if it had sold the asset in question).

(3) Where by virtue of section 138(8) of the [M8]Finance Act 1989 a company which, by virtue of the substitution of the new definition for the old definition, ceased to be a member of a group at the beginning of 14th March 1989 was not treated as selling an asset at any time unless the conditions in section 138(9) became satisfied, then that company shall continue not to be treated as selling the asset at that time unless the conditions in subsection (4) below become satisfied, assuming for that purpose that the old definition applies.

(4) Those conditions are—

(a) that for the purposes of section 178 or 179 the company in question ceases at any time ("the relevant time") to be a member of the group referred to in subsection (3) above,

(b) that, at the relevant time, the company in question, or an associated company also leaving that group at that time, owns otherwise than as trading stock the asset or property to which a chargeable gain has been carried forward from the asset on a replacement of business assets, and

(c) that the time of acquisition referred to in section 178(1) or 179(1) fell within the period of 6 years ending with the relevant time.

(5) Where, under any compromise or arrangement agreed to on any date before 14th March 1989 in pursuance of section 425 of the [M9]Companies Act 1985 and sanctioned by the court, one company acquires at any time, directly or indirectly, an interest in ordinary share capital of another company and immediately after that time—

(a) under the old definition the 2 companies are, by virtue of that acquisition, members of a group for the purposes of the group provisions, but

(b) the second company is not an effective 51 per cent. subsidiary of the first company,

subsection (6) below applies; and in that subsection those companies and any other members of the group are referred to as "relevant companies".

(6) In respect of the period beginning with the time of acquisition and ending with—

(a) the expiry of the 6 months beginning with the date of the agreement, or

(b) if earlier, the date when, under the old definition, the other company ceases for the purposes of the group provisions to be a member of the group referred to in subsection (5)(a) above,

the old definition shall apply in relation to the relevant companies for the purposes of the group provisions and, in relation to those companies, the reference in subsection (3) above to 14th March 1989 shall be read as a reference to the day following the end of that period.

(7) In subsections (3) to (6) above—

"arrangement" has the same meaning as in section 425 of the [M10]Companies Act 1985,

"effective 51 per cent. subsidiary" has the meaning given by section 170(7);

"group provisions" means sections 170 to 181 (excluding subsections (3) to (6) above);

"the new definition" means section 170; and

"the old definition" means section 272 of the [M11]Income and Corporation Taxes Act 1970 as it had effect on 13th March 1989,

and section 178(8) or 179(10) shall apply for the purposes of those subsections.

Subordinate Legislation Made

P1 S. 180(1)(b): 30.9.1993 appointed for the purposes of s. 179 by S.I. 1992/3066, **art. 2(2)(d)**

Marginal Citations

M6 1970 c. 10.
M7 1970 c. 10.
M8 1989 c. 26.
M9 1985 c. 6.
M10 1985 c. 6.
M11 1970 c. 10.

181 Exemption from charge under 178 or 179 in the case of certain mergers.

(1) Subject to the following provisions of this section, neither section 178 nor section 179 shall apply in a case where—

(a) as part of a merger, a company ("company A") ceases to be a member of a group of companies ("the A group"); and

(b) it is shown that the merger was carried out for bona fide commercial reasons and that the avoidance of liability to tax was not the main or one of the main purposes of the merger.

(2) In this section "merger" means an arrangement (which in this section includes a series of arrangements)—

(a) whereby one or more companies ("the acquiring company" or, as the case may be, "the acquiring companies") none of which is a member of the A group acquires or acquire, otherwise than with a view to their disposal, one or more interests in the whole or part of the business which, before the arrangement took effect, was carried on by company A; and

(b) whereby one or more members of the A group acquires or acquire, otherwise than with a view to their disposal, one or more interests in the whole or part of the business or each of the businesses which, before the arrangement took effect, was carried on either by the acquiring company or acquiring companies or by a company at least 90 per cent. of the ordinary share capital of which was then beneficially owned by 2 or more of the acquiring companies; and

(c) in respect of which the conditions in subsection (4) below are fulfilled.

(3) For the purposes of subsection (2) above, a member of a group of companies shall be treated as carrying on as one business the activities of that group.

(4) The conditions referred to in subsection (2)(c) above are—

(a) that not less than 25 per cent. by value of each of the interests acquired as mentioned in paragraphs (a) and (b) of subsection (2) above consists of a

holding of ordinary share capital, and the remainder of the interest, or as the case may be of each of the interests, acquired as mentioned in subsection (2)(b), consists of a holding of share capital (of any description) or debentures or both; and

(b) that the value or, as the case may be, the aggregate value of the interest or interests acquired as mentioned in subsection (2)(a) above is substantially the same as the value or, as the case may be, the aggregate value of the interest or interests acquired as mentioned in subsection (2)(b) above; and

(c) that the consideration for the acquisition of the interest or interests acquired by the acquiring company or acquiring companies as mentioned in subsection (2)(a) above, disregarding any part of that consideration which is small by comparison with the total, either consists of, or is applied in the acquisition of, or consists partly of and as to the balance is applied in the acquisition of, the interest or interests acquired by members of the A group as mentioned in subsection (2)(b) above;

and for the purposes of this subsection the value of an interest shall be determined as at the date of its acquisition.

(5) Notwithstanding the provisions of section 170(2)(a), references in this section to a company includes references to a company resident outside the United Kingdom.

Restriction on indexation allowance for groups and associated companies

182 Disposals of debts.

(1) Subject to subsection (3) below, where—

(a) there is a disposal by a company of a linked company debt on a security owed by another company, and

(b) the 2 companies are linked companies immediately before the disposal,

there shall be no indexation allowance on the disposal.

(2) Subject to subsection (3) below, where—

(a) there is a disposal by a company of a debt on a security owed by another company which is not a linked company debt on a security, and

(b) the 2 companies are linked companies immediately before the disposal,

then, in ascertaining any indexation allowance due on the disposal, RD as defined in section 54(1) shall be taken as the retail price index for the first month after the acquisition of the debt in which the 2 companies were linked companies (or, if later, March 1982).

(3) Where—

(a) there is a disposal by a company of a debt on a security owed by another company,

(b) the debt constituted or formed part of the new holding received by the company making the disposal on a reorganisation, and

(c) subsection (1) or (2) above would apply in relation to the disposal but for this subsection,

neither of those subsections shall apply in relation to the disposal, but any indexation allowance which, apart from this subsection, would be due on the disposal shall be reduced by such amount as appears to the inspector, or, on appeal, the Commissioners concerned, to be just and reasonable.

(4) For the purposes of this section a debt on a security owed by a company is a linked company debt on a security where immediately after its acquisition by the company making the disposal the 2 companies were linked companies.

(5) Where—

(a) there is a disposal by a company of a debt on a security owed by any person,

(b) the company and that person are not linked companies immediately before the disposal, and

(c) the debt was incurred by that person as part of arrangements involving another company being put in funds,

subsections (1) to (4) above shall have effect if and to the extent that they would if the debt were owed by that other company.

183 Disposals of shares.

(1) This section applies—

(a) where there is a disposal by a company of—

(i) a holding of redeemable preference shares of another company, or

(ii) a holding of shares, other than redeemable preference shares, of another company which has at all times consisted entirely of, or has at any time included, linked company shares, or

(b) where—

(i) there is a disposal by a company of a holding of shares of another company which is not a holding falling within paragraph (a) above,

(ii) the holding constituted or formed part of the new holding received by the company making the disposal on a reorganisation, and

(iii) but for section 127 that reorganisation (or in a case where the holding disposed of derives, in whole or in part, from assets which were original shares in relation to an earlier reorganisation, that reorganisation or any such earlier reorganisation) would have involved a disposal in relation to which section 182(1) would have applied or this section would have applied by virtue of paragraph (a) above,

if the 2 companies are linked companies immediately before the disposal.

(2) Where this section applies, any indexation allowance which, apart from this section, would be due on the disposal shall be reduced by such amount as appears to the inspector, or on appeal the Commissioners concerned, to be just and reasonable.

(3) For the purposes of this section, shares of a company are linked company shares where—

(a) immediately after their acquisition by the company making the disposal the 2 companies were linked companies,

(b) their acquisition by the company making the disposal was wholly or substantially financed by one or more linked company loans or linked company funded subscriptions (or by a combination of such loans and subscriptions), and

(c) the sole or main benefit which might have been expected to accrue from that acquisition was the obtaining of an indexation allowance on a disposal of the shares.

(4) In subsection (3) above—

"linked company loan" means a loan made to the company making the disposal by another company where immediately after the acquisition of the shares by the company making the disposal the 2 companies were linked companies, and

"linked company funded subscription" means a subscription for shares in the company making the disposal by another company where—

(a) immediately after the acquisition of the shares by the company making the disposal those 2 companies were linked companies, and

(b) the subscription was wholly or substantially financed, either directly or indirectly, by one or more linked company subscription-financing loans.

(5) In subsection (4) above "linked company subscription-financing loan" means a loan made by a company to the subscribing company or any other company where immediately after the acquisition of the shares by the company making the disposal—

(a) the company making the loan, and

(b) the subscribing company, and

(c) where the company to which the loan was made was not the subscribing company, that company,

were linked companies.

184 Definitions and other provisions supplemental to sections 182 and 183.

(1) For the purposes of this section and sections 182 and 183 companies are linked companies if they are members of the same group or are associated with each other; and for the purposes of this section—

(a) "group" means a company which has one or more 51 per cent. subsidiaries together with that subsidiary or those subsidiaries (section 838 (meaning of 51 per cent. subsidiary) of the Taxes Act having effect for the purposes of this paragraph as for those of the Tax Acts), and

(b) 2 companies are associated with each other if one controls the other or both are under the control of the same person or persons (section 416(2) to (6) (meaning of control) of the Taxes Act having effect for the purposes of this paragraph as for those of Part XI of that Act).

(2) Where a disposal of a holding of shares follows one or more disposals of the same holding to which section **[**F9140A,**]** 171(1) or 172 applied, section 183(3) to (5) shall have effect as if the references to the company making the disposal were references to the company which last acquired the asset otherwise than on a disposal to which **[**F9one**]** of those sections applied.

(3) In section 183 "redeemable preference shares" means shares in a company which are described as such in the terms of their issue or which fulfil the condition in paragraph (a) below and either or both of the conditions in paragraphs (b) and (c) below—

(a) that, as against other shares in the company, they carry a preferential entitlement to a dividend or to any assets in a winding up or both;

(b) that, by virtue of the terms of their issue, the exercise of a right by any person or the existence of any arrangements, they are liable to be redeemed, cancelled or repaid, in whole or in part;

(c) that, by virtue of any arrangements—

(i) to which the company which issued the shares is a party, or

(ii) where that company and another company are linked companies at the time of the issue, to which that other company is a party,

the holder has a right to require another person to acquire the shares or is obliged in any circumstances to dispose of them or another person has a right or is in any circumstances obliged to acquire them;

and for the purposes of paragraph (a) above shares are to be treated as carrying a preferential entitlement to a dividend as against other shares if, by virtue of any arrangements, there are circumstances in which a minimum dividend will be payable on those shares but not on others.

(4) In sections 182 and 183 the expressions "reorganisation", "original shares" and "new holding" have the meanings given by section 126 except that, in a case where sections 127 and 128 apply in circumstances other than a reorganisation (within the meaning of section 126) by virtue of any other provision of Chapter II of Part IV those expressions shall be construed as they fall to be construed in sections 127 and 128 as they so apply.

(5) In this section and sections 182 and 183—

"holding", in relation to shares, means a number of shares which are to be regarded for the purposes of this Act as indistinguishab1e parts of a single asset,

"security" has the same meaning as in section 132.

Textual Amendments

F9 Words in s. 184(2) inserted (*retrosp.*) by 1992 c. 48, **s. 46(1)(7)(a)(b)**

Non-resident and dual resident companies

185 Deemed disposal of assets on company ceasing to be resident in U.K.

(1) This section and section 187 apply to a company if, at any time ("the relevant time"), the company ceases to be resident in the United Kingdom.

(2) The company shall be deemed for all purposes of this Act—

(a) to have disposed of all its assets, other than assets excepted from this subsection by subsection (4) below, immediately before the relevant time; and

(b) immediately to have reacquired them,

at their market value at that time.

(3) Section 152 shall not apply where the company—

(a) has disposed of the old assets, or of its interest in those assets, before the relevant time; and

(b) acquires the new assets, or its interest in those assets, after that time,

unless the new assets are excepted from this subsection by subsection (4) below.

(4) If at any time after the relevant time the company carries on a trade in the United Kingdom through a branch or agency—

(a) any assets which, immediately after the relevant time, are situated in the United Kingdom and are used in or for the purposes of the trade, or are used

or held for the purposes of the branch or agency, shall be excepted from subsection (2) above; and

(b) any new assets which, after that time, are so situated and are so used or so held shall be excepted from subsection (3) above;

and references in this subsection to assets situated in the United Kingdom include references to exploration or exploitation assets and to exploration or exploitation rights.

(5) In this section—

(a) "designated area", "exploration or exploitation activities" and "exploration or exploitation rights" have the same meanings as in section 276;

(b) "exploration or exploitation assets" means assets used or intended for use in connection with exploration or exploitation activities carried on in the United Kingdom or a designated area;

(c) "the old assets" and "the new assets" have the same meanings as in section 152;

and a company shall not be regarded for the purposes of this section as ceasing to be resident in the United Kingdom by reason only that it ceases to exist.

186 Deemed disposal of assets on company ceasing to be liable to U.K. taxation.

(1) This section and section 187 apply to a company if, at any time ("the relevant time"), the company, while continuing to be resident in the United Kingdom, becomes a company which falls to be regarded for the purposes of any double taxation relief arrangements—

(a) as resident in a territory outside the United Kingdom; and

(b) as not liable in the United Kingdom to tax on gains arising on disposals of assets of descriptions specified in the arrangements ("prescribed assets").

(2) The company shall be deemed for all purposes of this Act—

(a) to have disposed of all its prescribed assets immediately before the relevant time; and

(b) immediately to have reacquired them,

at their market value at that time.

(3) Section 152 shall not apply where the new assets are prescribed assets and the company—

(a) has disposed of the old assets, or of its interest in those assets, before the relevant time; and

(b) acquires the new assets, or its interest in those assets, after that time,

and in this section "the old assets" and "the new assets" have the same meanings as in section 152.

187 Postponement of charge on deemed disposal under section 185 or 186.

(1) If—

(a) immediately after the relevant time, a company to which this section applies by virtue of section 185 or 186 ("the company") is a 75 per cent. subsidiary of another company ("the principal company") which is resident in the United Kingdom; and

(b) the principal company and the company so elect, by notice given to the inspector within 2 years after that time,

this Act shall have effect in accordance with the following provisions.

(2) Any allowable losses accruing to the company on a deemed disposal of foreign assets shall be set off against the chargeable gains so accruing and—

(a) that disposal shall be treated as giving rise to a single chargeable gain equal to the aggregate of those gains after deducting the aggregate of those losses; and

(b) the whole of that gain shall be treated as not accruing to the company on that disposal but an equivalent amount ("the postponed gain") shall be brought into account in accordance with subsections (3) and (4) below.

(3) If at any time within 6 years after the relevant time the company disposes of any assets ("relevant assets") the chargeable gains on which were taken into account in arriving at the postponed gain, there shall be deemed to accrue to the principal company as a chargeable gain on that occasion the whole or the appropriate proportion of the postponed gain so far as not already taken into account under this subsection or subsection (4) below.

In this subsection "the appropriate proportion" means the proportion which the chargeable gain taken into account in arriving at the postponed gain in respect of the part of the relevant assets disposed of bears to the aggregate of the chargeable gains so taken into account in respect of the relevant assets held immediately before the time of the disposal.

(4) If at any time after the relevant time—

(a) the company ceases to be a 75 per cent. subsidiary of the principal company on the disposal by the principal company of ordinary shares of the company;

(b) after the company has ceased to be such a subsidiary otherwise than on such a disposal, the principal company disposes of such shares; or

(c) the principal company ceases to be resident in the United Kingdom,

there shall be deemed to accrue to the principal company as a chargeable gain on that occasion the whole of the postponed gain so far as not already taken into account under this subsection or subsection (3) above.

(5) If at any time—

(a) the company has allowable losses which have not been allowed as a deduction from chargeable gains; and

(b) a chargeable gain accrues to the principal company under subsection (3) or (4) above,

then, if and to the extent that the principal company and the company so elect by notice given to the inspector within 2 years after that time, those losses shall be allowed as a deduction from that gain.

(6) In this section—

"deemed disposal" means a disposal which, by virtue of section 185(2) or, as the case may be, section 186(2), is deemed to have been made;

"foreign assets" means any assets of the company which, immediately after the relevant time, are situated outside the United Kingdom and are used in or for the purposes of a trade carried on outside the United Kingdom;

"ordinary share" means a share in the ordinary share capital of the company;

"the relevant time" has the meaning given by section 185(1) or, as the case may be, section 186(1).

(7) For the purposes of this section a company is a 75 per cent. subsidiary of another company if and so long as not less than 75 per cent. of its ordinary share capital is owned directly by that other company.

188 Dual resident companies: deemed disposal of certain assets.

(1) For the purposes of this section, a company is a dual resident company if it is resident in the United Kingdom and falls to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.

(2) Where an asset of a dual resident company becomes a prescribed asset, the company shall be deemed for all purposes of this Act—

(a) to have disposed of the asset immediately before the time at which it became a prescribed asset, and

(b) immediately to have reacquired it,

at its market value at that time.

(3) Subsection (2) above does not apply where the asset becomes a prescribed asset on the company becoming a company which falls to be regarded as mentioned in subsection (1) above.

(4) In this section "prescribed asset", in relation to a dual resident company, means an asset in respect of which, by virtue of the asset being of a description specified in any double taxation relief arrangements, the company falls to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to it on a disposal.

Recovery of tax otherwise than from tax-payer company

189 Capital distribution of chargeable gains: recovery of tax from shareholder.

(1) This section applies where a person who is connected with a company resident in the United Kingdom receives or becomes entitled to receive in respect of shares in the company any capital distribution from the company, other than a capital distribution representing a reduction of capital, and—

(a) the capital so distributed derives from the disposal of assets in respect of which a chargeable gain accrued to the company; or

(b) the distribution constitutes such a disposal of assets;

and that person is referred to below as "the shareholder".

(2) If the corporation tax assessed on the company for the accounting period in which the chargeable gain accrues included any amount in respect of chargeable gains, and any of the tax assessed on the company for that period is not paid within 6 months from the date determined under subsection (3) below, the shareholder may by an assessment made within 2 years from that date be assessed and charged (in the name of the company) to an amount of that corporation tax—

(a) not exceeding the amount or value of the capital distribution which the shareholder has received or become entitled to receive; and

(b) not exceeding a proportion equal to the shareholder's share of the capital distribution made by the company of corporation tax on the amount of that gain at the rate in force when the gain accrued.

(3) The date referred to in subsection (2) above is whichever is the later of—

(a) the date when the tax becomes due and payable by the company; and

(b) the date when the assessment was made on the company.

(4) Where the shareholder pays any amount of tax under this section, he shall be entitled to recover from the company a sum equal to that amount together with any interest paid by him under section 87A of the Management Act on that amount.

(5) The provisions of this section are without prejudice to any liability of the shareholder in respect of a chargeable gain accruing to him by reference to the capital distribution as constituting a disposal of an interest in shares in the company.

(6) With respect to chargeable gains accruing in accounting periods ending on or before such day as the Treasury may be order appoint this section shall have effect—

(a) with the substitution for the words in subsection (3) after "above" of the words " is the date when the tax becomes payable by the company "; and

(b) with the omission of the words in subsection (4) from "together" to the end of the subsection.

(7) In this section "capital distribution" has the same meaning as in section 122.

Commencement Information

I2 S. 189: 30.9.1993 appointed for the purposes of s. 189 by S.I. 1992/3066, **art. 2(2)(d)**

190 Tax on one member of group recoverable from another member.

(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 6 months from the date determined under subsection (2) below 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 2 years ending with that time was a member of that 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 2 years from the date determined under subsection (2) below 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) The date referred to in subsection (1) above is whichever is the later of—

(a) the date when the tax becomes due and payable by the company; and

(b) the date when the assessment is made on the company.

(3) 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.

(4) Any reference in subsection (3) above to an amount of tax includes a reference to any interest paid under section 87A of the Management Act on that amount.

(5) Section 170 shall apply for the interpretation of this section as it applies for the interpretation of sections 171 to 181.

(6) In relation to any chargeable gains accruing in accounting periods ending on or before such day as the Treasury may by order appoint this section shall have effect—

(a) with the substitution for the words in subsection (2) after "above" of the words " is the date when the tax becomes payable by the company "; and

(b) with the omission of subsection (4).

Commencement Information

I3 S. 190: 30.9.1993 appointed for the purposes of s. 190 by S.I. 1992/3066, **art. 2(2)(d)**

191 Tax on non-resident company recoverable from another member of group or from controlling director.

(1) This section applies where—

(a) a chargeable gain has accrued to a company not resident in the United Kingdom (the tax-payer company) on the disposal of an asset on or after 14th March 1989,

(b) the gain forms part of its chargeable profits for corporation tax purposes by virtue of section 10(3), and

(c) any of the corporation tax assessed on the company for the accounting period in which the gain accrued is not paid within 6 months from the time when it becomes payable.

(2) The Board may, at any time before the end of the period of 3 years beginning with the time when the amount of corporation tax for the accounting period in which the chargeable gain accrued is finally determined, serve on any person to whom subsection (4) below applies a notice—

(a) stating the amount which remains unpaid of the corporation tax assessed on the tax-payer company for the accounting period in which the gain accrued and the date when the tax became payable, and

(b) requiring that person to pay the relevant amount within 30 days of the service of the notice.

(3) For the purposes of subsection (2) above the relevant amount is the lesser of—

(a) the amount which remains unpaid of the corporation tax assessed on the tax-payer company for the accounting period in which the gain accrued, and

(b) an amount equal to corporation tax on the amount of the chargeable gain at the rate in force when the gain accrued.

(4) This subsection applies to the following persons—

(a) any company which is, or during the period of 12 months ending with the time when the gain accrued, was, a member of the same group as the tax-payer company, and

(b) any person who is, or during that period was, a controlling director of the tax-payer company or of a company which has, or within that period had, control over the tax-payer company.

This subsection shall have effect in any case where the gain accrued before 13th March 1990 with the substitution of " beginning with 14th March 1989 and " for "of 12 months".

(5) Any amount which a person is required to pay by a notice under this section may be recovered from him as if it were tax due and duly demanded of him; and he may recover any such amount paid by him from the tax-payer company.

(6) A payment in pursuance of a notice under this section shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.

(7) In this section—

"director", in relation to a company, has the meaning given by subsection (8) of section 168 of the Taxes Act (read with subsection (9) of that section) and includes any person falling within subsection (5) of section 417 of that Act (read with subsection (6) of that section);

"controlling director", in relation to a company, means a director of the company who has control of it (construing control in accordance with section 416 of the Taxes Act);

"group" has the meaning which would be given by section 170 if in that section references to residence in the United Kingdom were omitted and for references to 75 per cent. subsidiaries there were substituted references to 51 per cent. subsidiaries.

Demergers

192 Tax exempt distributions.

(1) This section has effect for facilitating certain transactions whereby trading activities carried on by a single company or group are divided so as to be carried on by 2 or more companies not belonging to the same group or by 2 or more independent groups.

(2) Where a company makes an exempt distribution which falls within section 213(3)(a) of the Taxes Act—

(a) the distribution shall not be a capital distribution for the purposes of section 122; and

(b) sections 126 to 130 shall, with the necessary modifications, apply as if that company and the subsidiary whose shares are transferred were the same company and the distribution were a reorganisation of its share capital.

(3) Subject to subsection (4) below, neither section 178 nor 179 shall apply in a case where a company ceases to be a member of a group by reason only of an exempt distribution.

(4) Subsection (3) does not apply if within 5 years after the making of the exempt distribution there is chargeable payment; and the time for making an assessment under section 178 or 179 by virtue of this subsection shall not expire before the end of 3 years after the making of the chargeable payment.

(5) In this section—

"chargeable payment" has the meaning given in section 214(2) of the Taxes Act;

"exempt distribution" means a distribution which is exempt by virtue of section 213(2) of that Act; and

"group" means a company which has one or more 75 per cent. subsidiaries together with that or those subsidiaries.

(6) In determining for the purposes of this section whether one company is a 75 per cent. subsidiary of another, the other company shall be treated as not being the owner of—

(a) any share capital which it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade; or

(b) any share capital which it owns indirectly and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt.

Status:
Point in time view as at 27/07/1993.

Changes to legislation:
Taxation of Chargeable Gains Act 1992, Chapter I is up to date with all changes known to be in force on or before 03 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.