Taxation of Chargeable Gains Act 1992

1992 CHAPTER 12

PART VI

COMPANIES, OIL, INSURANCE ETC.

CHAPTER I

COMPANIES

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 **[**F1in 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

F1 Words in s. 178(1) substituted (*retrosp.*) by 1992 c. 48, **s. 25(1)**

Modifications etc. (not altering text)

C1 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 **[**F2in 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 as follows—

(a) for the purposes for which the assumptions in section 409(2) of the Taxes Act (group relief) apply, it shall be assumed to accrue in the notional or actual accounting period which ends when the company ceases to be a member of the group; and

(b) subject to paragraph (a) above, it shall be treated as accruing immediately before the company ceases to be a member of the group.

(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

F2 Words in s. 179(1) substituted (*retrosp.*) by 1992 c. 48, **s. 25(1)**

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 [M1]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 [M2]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 [M3]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 [M4]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 [M5]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 [M6]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

M1 1970 c. 10.
M2 1970 c. 10.
M3 1989 c. 26.
M4 1985 c. 6.
M5 1985 c. 6.
M6 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.

Status:
Point in time view as at 16/07/1992.

Changes to legislation:
Taxation of Chargeable Gains Act 1992, Cross Heading: Companies leaving groups is up to date with all changes known to be in force on or before 08 August 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.