



# 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—

- <sup>F1</sup>(a) .....
- (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 [<sup>F2</sup>section 1154(3) of CTA 2010 (meaning of “75% subsidiary”)] any share capital of a [<sup>F3</sup>registered society (see section 1119 of that Act)] 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.

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- (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 [F4 section 1154(2) of CTA 2010]).
- (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.

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- [<sup>F5</sup>(8) Chapter 6 of Part 5 of CTA 2010 (group relief: equity holders and profits or assets available for distribution) applies for the purposes of subsections (6) and (7) as if—
- (a) references to section 151(4)(a) and (b) of that Act were references to subsections (6) and (7) above, <sup>F6</sup>...
  - [<sup>F7</sup>(aa) in section 158 of that Act after subsection (2) there were inserted—
    - “(2A) But for those purposes a person carrying on a business of banking is not treated as a loan creditor of a company in respect of any loan capital or debt issued or incurred by the company for money lent by the person to the company in the ordinary course of that business.”, and]
    - (b) sections 171(1)(b) and (3), 173, 174 and 176 to 178 of that Act were omitted.]
- (9) For the purposes of this section and sections 171 to 181, references to a company apply only to—
- (a) a company [<sup>F8</sup>as defined in section 1(1) of the Companies Act 2006 (c. 46)], and
  - (b) a company [<sup>F9</sup>(other than a limited liability partnership)] which is constituted under any other Act or a Royal Charter or letters patent or <sup>F10</sup>... is formed under the law of a country or territory outside the United Kingdom, and
  - (c) a [<sup>F11</sup>registered society (see section 1119 of CTA 2010)]<sup>F12</sup>... ; and
  - [<sup>F13</sup>(cc) an incorporated friendly society within the meaning of the Friendly Societies Act 1992; 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.
- [<sup>F14</sup>(10A) Where the principal company of a group (Group 1)—
- (a) becomes an SE by reason of being the acquiring company in the formation of an SE by merger by acquisition (in accordance with Articles 2(1), 17(2)(a) and 29(1) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea)),
  - (b) becomes a subsidiary of a holding SE (formed in accordance with Article 2(2) of that Regulation), or
  - (c) is transformed into an SE (in accordance with Article 2(4) of that Regulation),
- Group 1 and any group of which the SE is a member on formation 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

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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 <sup>M1</sup>Transport Act 1962 and the new authorities within the meaning of the <sup>M2</sup>Transport 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 <sup>M3</sup>Transport Act 1968 as if that Executive were a company within the meaning of those sections.

#### Textual Amendments

- F1** S. 170(2)(a) repealed (with effect in accordance with Sch. 29 para. 1(2), Sch. 40 Pt. II(12) Note 4 of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 29 para. 1\(1\)\(a\)](#), [Sch. 40 Pt. II\(12\)](#) (with [Sch. 29 para. 46\(5\)](#))
- F2** Words in s. 170(2)(c) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 242\(2\)](#) (with [Sch. 2](#))
- F3** Words in s. 170(2)(c) substituted (1.8.2014) by [Co-operative and Community Benefit Societies Act 2014 \(c. 14\)](#), s. 154, [Sch. 4 para. 50\(2\)](#) (with [Sch. 5](#)) (as amended (1.8.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 39 paras. 6\(a\)](#), 15)
- F4** Words in s. 170(6)(d) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 242\(3\)](#) (with [Sch. 2](#))
- F5** S. 170(8) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 242\(4\)](#) (with [Sch. 2](#))
- F6** Word in s. 170(8)(a) omitted (with retrospective effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Corporation Tax Act 2010 \(Amendment\) Order 2010 \(S.I. 2010/2902\)](#), arts. 1(1), [2\(2\)\(a\)](#)
- F7** S. 170(8)(aa) inserted (with retrospective effect in accordance with art. 1(2) of the amending S.I.) by [The Corporation Tax Act 2010 \(Amendment\) Order 2010 \(S.I. 2010/2902\)](#), arts. 1(1), [2\(2\)\(b\)](#)
- F8** Words in s. 170(9)(a) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2009 \(S.I. 2009/1890\)](#), arts. 1(1), [3\(2\)\(c\)](#)
- F9** Words in s. 170(9)(b) inserted (6.4.2001) by [Finance Act 2001 \(c. 9\)](#), s. [75\(4\)\(6\)](#) (with [Sch. 3](#))
- F10** Words in s. 170(9)(b) repealed (with effect in accordance with Sch. 29 para. 1(2), Sch. 40 Pt. II(12) Note 4 of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 29 para. 1\(1\)\(b\)](#), [Sch. 40 Pt. II\(12\)](#) (with [Sch. 29 para. 46\(5\)](#))
- F11** Words in s. 170(9)(c) substituted (1.8.2014) by [Co-operative and Community Benefit Societies Act 2014 \(c. 14\)](#), s. 154, [Sch. 4 para. 50\(3\)](#) (with [Sch. 5](#)) (as amended (1.8.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 39 paras. 6\(b\)](#), 15)
- F12** Words in s. 170(9)(c) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 375](#), [Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))
- F13** S. 170(9)(cc) inserted (with application in accordance with s. 136(4) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), s. [136\(1\)](#)
- F14** S. 170(10A) inserted (with effect in accordance with s. 62(2) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), s. [62\(1\)](#)

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

- C1** S. 170 extended (3.5.1994) by Finance Act 1994 (c. 9), **s. 148(9)**
- C2** S. 170 applied (23.3.1995) by The Exchange Gains and Losses (Deferral of Gains and Losses) Regulations 1994 (S.I. 1994/3228), regs. 1(2), **4(1)**
- C3** S. 170 applied (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 9 para. 11(5)**
- C4** S. 170 applied (with effect in accordance with s. 81(12) of the amending Act) by Finance Act 1999 (c. 16), **s. 81(7)**
- C5** Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**
- C6** Ss. 170-181 restricted (12.1.2000) by Greater London Authority Act 1999 (c. 29), **ss. 419(3)**, 425(2); S.I. 1999/3434, art. 2
- C7** S. 170 applied (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 26 para. 28(6)**
- C8** S. 170 applied (with modifications) (1.8.2004) by Finance Act 2004 (c. 12), **ss. 307(4)**, 319(2) (with s. 314)
- C9** Ss. 170-181 modified (5.10.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 9 para. 35(a)** (with s. 38(2)); S.I. 2004/2575, art. 2(1), Sch. 1
- C10** S. 170 modified (6.4.2006) by The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), regs. 1, **37(1)**
- C11** S. 170 modified (E.W.S.) (1.9.2012) by The National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 (S.I. 2012/1868), regs. 1, **7(5)**
- C12** S. 170(2)-(11) applied (with modifications) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **s. 554Z(5)** (as inserted (19.7.2011) by Finance Act 2011 (c. 11), **Sch. 2 para. 1**)
- C13** S. 170(3)-(6) applied (with effect in accordance with s. 1184(1) of the affecting Act) by Corporation Tax Act 2010 (c. 4), **ss. 996(3)**, 1184(1) (with Sch. 2)
- C14** S. 170(7)(8) applied (with modifications) (3.1.1995) by The Ports (Northern Ireland) Order 1994 (S.I. 1994/2809 (N.I. 16)), arts. 1(2), **19(12)**
- C15** S. 170(7) modified by 1988 c. 1, s. 209(8E) (as inserted (with effect in accordance with s. 87(7)(8) of the amending Act) by Finance Act 1995 (c. 4), **s. 87(3)**)
- C16** S. 170(12)-(14) applied (with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), **ss. 773(2)**, 1329(1) (with Sch. 2 Pts. 1, 2)

#### Marginal Citations

- M1** 1962 c. 46.
- M2** 1968 c. 73.
- M3** 1968 c. 73.

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