

Status: Point in time view as at 08/07/2008.

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SCHEDULES

[^{F1}SCHEDULE 7AC

EXEMPTIONS FOR DISPOSALS BY COMPANIES WITH SUBSTANTIAL SHAREHOLDING

Textual Amendments

- F1** Sch. 7AC inserted (with effect in accordance with s. 44(3)(4) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 8 para. 1](#)

PART 1

THE EXEMPTIONS

The main exemption

- 1 (1) A gain accruing to a company (“the investing company”) on a disposal of shares or an interest in shares in another company (“the company invested in”) is not a chargeable gain if the requirements of this Schedule are met.
- (2) The requirements are set out in—
Part 2 (the substantial shareholding requirement), and
Part 3 (requirements to be met in relation to the investing company and the company invested in).
- (3) The exemption conferred by this paragraph does not apply in the circumstances specified in paragraph 5 or the cases specified in paragraph 6.

Subsidiary exemption: disposal of asset related to shares where main exemption conditions met

- 2 (1) A gain accruing to a company (“company A”) on a disposal of an asset related to shares in another company (“company B”) is not a chargeable gain if either of the following conditions is met.
- (2) The first condition is that—
(a) immediately before the disposal company A holds shares or an interest in shares in company B, and
(b) any gain accruing to company A on a disposal at that time of the shares or interest would, by virtue of paragraph 1, not be a chargeable gain.
- (3) The second condition is that—
(a) immediately before the disposal company A does not hold shares or an interest in shares in company B but is a member of a group and another

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- member of that group does hold shares or an interest in shares in company B, and
- (b) if company A, rather than that other company, held the shares or interest, any gain accruing to company A on a disposal at that time of the shares or interest would, by virtue of paragraph 1, not be a chargeable gain.
- (4) Where assets of a company are vested in a liquidator under section 145 of the Insolvency Act 1986 or Article 123 of the Insolvency (Northern Ireland) Order 1989 or otherwise, this paragraph applies as if the assets were vested in, and the acts of the liquidator in relation to the assets were the acts of, the company (acquisitions from or disposals to him by the company being disregarded accordingly).
- (5) The exemption conferred by this paragraph does not apply in the circumstances specified in paragraph 5 or the cases specified in paragraph 6.

Subsidiary exemption: disposal of shares or related asset where main exemption conditions previously met

- 3 (1) A gain accruing to a company (“company A”) on a disposal of shares, or an interest in shares or an asset related to shares, in another company (“company B”) is not a chargeable gain if the following conditions are met.
- (2) The conditions are—
- (a) that at the time of the disposal company A meets the requirement in paragraph 7 (the substantial shareholding requirement) in relation to company B;
- (b) that a chargeable gain or allowable loss would, apart from this paragraph, accrue to company A on the disposal (but see sub-paragraph (3) below);
- (c) that at the time of the disposal—
- (i) company A is resident in the United Kingdom, or
- (ii) any chargeable gain accruing to company A on the disposal would, by virtue of [^{F2}section 10B], form part of that company’s chargeable profits for corporation tax purposes;
- (d) that there was a time within the period of two years ending with the disposal (“the relevant period”) when, if—
- (i) company A, or
- (ii) a company that at any time in the relevant period was a member of the same group as company A,
- had disposed of shares or an interest in shares in company B that it then held, a gain accruing would, by virtue of paragraph 1, not have been a chargeable gain; and
- (e) that, if at the time of the disposal the requirements of paragraph 19 (requirements relating to company invested in) are not met in relation to company B, there was a time within the relevant period when company B was controlled by—
- (i) company A, or
- (ii) company A together with any persons connected with it, or
- (iii) a company that at any time in the relevant period was a member of the same group as company A, or
- (iv) any such company together with any persons connected with it.

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- (3) Sub-paragraph (1) does not apply if—
- (a) the condition in sub-paragraph (2)(b) is met but would not be met but for a failure to meet the requirement in paragraph 18(1)(b) (requirement as to investing company to be met immediately after the disposal), and
 - (b) the failure to meet that requirement is not due to—
 - (i) the fact that company A has been wound up or dissolved, or
 - (ii) where the winding up or dissolution takes place as soon as is reasonably practicable in the circumstances, the fact that company A is about to be wound up or dissolved.
- (4) In determining for the purpose of sub-paragraph (2)(d) whether a gain accruing on the hypothetical disposal referred to would have been a chargeable gain, the requirements of paragraph 18(1)(b) and of paragraph 19(1)(b) (requirement as to company invested in to be met immediately after the disposal) shall be assumed to be met.
- (5) Where—
- (a) immediately before the disposal company B holds an asset,
 - (b) the expenditure allowable in computing any gain or loss on that asset, were it to be disposed of by company B immediately before that disposal, would fall to be reduced because of a claim to relief under section 165 (gifts relief) in relation to an earlier disposal, and
 - (c) that earlier disposal took place within the relevant period,
- sub-paragraph (1) does not prevent a gain accruing to company A on the disposal from being a chargeable gain but any loss so accruing is not an allowable loss.
- (6) Where assets of company B are vested in a liquidator under section 145 of the Insolvency Act 1986 or Article 123 of the Insolvency (Northern Ireland) Order 1989 or otherwise, sub-paragraph (5)(a) applies as if the assets were vested in the company.
- (7) In determining “the relevant period” for the purposes of sub-paragraph (2)(d) or (e) or sub-paragraph (5)(c), section 28 (time of disposal under contract) applies with the omission of subsection (2) (postponement of time of disposal in case of conditional contract).
- (8) The exemption conferred by this paragraph does not apply in the circumstances specified in paragraph 5 or the cases specified in paragraph 6.

Textual Amendments

- F2** Words in Sch. 7AC para. 3(2)(c)(ii) substituted (with effect in accordance with Sch. 4 para. 10(4) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 4 para. 9\(2\)](#)

Application of exemptions in priority to provisions deeming there to be no disposal etc

- 4 (1) For the purposes of determining whether an exemption conferred by this Schedule applies, the question whether there is a disposal shall be determined without regard to—
- (a) section 116(10) (reorganisation, conversion of securities, etc treated as not involving disposal),
 - (b) section 127 (share reorganisations etc treated as not involving disposal), or

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- (c) section 192(2)(a) (distribution not treated as capital distribution).
- (2) Sub-paragraph (1) does not apply to a disposal of shares if the effect of its applying would be that relief attributable to the shares under Schedule 15 to the Finance Act 2000 (corporate venturing scheme) would be withdrawn or reduced under paragraph 46 of that Schedule (withdrawal or reduction of investment relief on disposal of shares).
- (3) Where or to the extent that an exemption conferred by this Schedule does apply—
 - (a) the provisions mentioned in sub-paragraph (1)(a) and (b) do not apply in relation to the disposal, and
 - (b) the provision mentioned in sub-paragraph (1)(c) does not apply in relation to the subject matter of the disposal.
- (4) Where section 127 is disapplied by sub-paragraph (3)(a) in a case in which that section would otherwise have applied in relation to the disposal by virtue of paragraph 84 of Schedule 15 to the Finance Act 2000 (corporate venturing scheme: share exchanges), paragraph 85 of that Schedule (attribution of relief to new shares) does not apply.
- (5) In this paragraph any reference to section 127 includes a reference to that provision as applied by any enactment relating to corporation tax.

Circumstances in which exemptions do not apply

- 5 (1) Where in pursuance of arrangements to which this paragraph applies—
 - (a) an untaxed gain accrues to a company (“company A”) on a disposal of shares, or an interest in shares or an asset related to shares, in another company (“company B”), and
 - (b) before the accrual of that gain—
 - (i) company A acquired control of company B, or the same person or persons acquired control of both companies, or
 - (ii) there was a significant change of trading activities affecting company B at a time when it was controlled by company A, or when both companies were controlled by the same person or persons,
 none of the exemptions in this Schedule applies to the disposal.
- (2) This paragraph applies to arrangements from which the sole or main benefit that (but for this paragraph) could be expected to arise is that the gain on the disposal would, by virtue of this Schedule, not be a chargeable gain.
- (3) For the purposes of sub-paragraph (1)(a) a gain is “untaxed” if the gain, or all of it but a part that is not substantial, represents profits that have not been brought into account (in the United Kingdom or elsewhere) for the purposes of tax on profits for a period ending on or before the date of the disposal.
- (4) The reference in sub-paragraph (3) to profits being brought into account for the purposes of tax on profits includes a reference to the case where—
 - (a) an amount in respect of those profits is apportioned to a company resident in the United Kingdom by virtue of subsection (3) of section 747 of the Taxes Act 1988 (imputation of chargeable profits etc of controlled foreign companies), and

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- (b) a sum is chargeable on that company in respect of that amount by virtue of subsection (4) of that section for an accounting period of that company ending on or before the date of the disposal.
- (5) For the purposes of sub-paragraph (1)(b)(ii) there is a “significant change of trading activities affecting company B” if—
- (a) there is a major change in the nature or conduct of a trade carried on by company B or a 51% subsidiary of company B, or
 - (b) there is a major change in the scale of the activities of a trade carried on by company B or a 51% subsidiary of company B, or
 - (c) company B or a 51% subsidiary of company B begins to carry on a trade.
- (6) In this paragraph—
- “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable;
 - “major change in the nature or conduct of a trade” has the same meaning as in section 768 of the Taxes Act (change of ownership of company: disallowance of trading losses);
 - “profits” means income or gains (including unrealised income or gains).

Other cases excluded from exemptions

- 6 (1) The exemptions conferred by this Schedule do not apply—
- (a) to a disposal that by virtue of any enactment relating to chargeable gains is deemed to be for a consideration such that no gain or loss accrues to the person making the disposal,
 - (b) to a disposal a gain on which would, by virtue of any enactment not contained in this Schedule, not be a chargeable gain, or
 - (c) to a deemed disposal under section 440(1) or (2) of the Taxes Act (deemed disposal on transfer of asset of insurance company from one category to another).
- (2) The hypothetical disposal referred to in paragraph 2(2)(b) or (3)(b) or paragraph 3(2)(d) shall be assumed not to be a disposal within sub-paragraph (1)(a), (b) or (c) above.]

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