

Status: Point in time view as at 01/09/2004.

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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 2

THE SUBSTANTIAL SHAREHOLDING REQUIREMENT

The requirement

- 7 The investing company must have held a substantial shareholding in the company invested in throughout a twelve-month period beginning not more than two years before the day on which the disposal takes place.

Meaning of “substantial shareholdin”g

- 8 (1) For the purposes of this Schedule a company holds a “substantial shareholding” in another company if it holds shares or interests in shares in that company by virtue of which—
- (a) it holds not less than 10% of the company’s ordinary share capital,
 - (b) it is beneficially entitled to not less than 10% of the profits available for distribution to equity holders of the company, and
 - (c) it would be beneficially entitled on a winding up to not less than 10% of the assets of the company available for distribution to equity holders.
- This is without prejudice to what is meant by “substantial” where the word appears in other contexts.
- (2) Schedule 18 to the Taxes Act 1988 (meaning of equity holder and determination of profits or assets available for distribution) applies for the purposes of sub-paragraph (1).
- (3) In that Schedule as it applies for those purposes—
- (a) for any reference to sections 403C and 413(7) of that Act, or either of those provisions, substitute a reference to sub-paragraph (1) above;
 - (b) omit the words in paragraph 1(4) from “but” to the end;
 - (c) omit paragraph 5(3) and paragraphs 5B to 5F; and
 - (d) omit paragraph 7(1)(b).

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Aggregation of holdings of group companies

- 9 (1) For the purposes of paragraph 7 (the substantial shareholding requirement) a company that is a member of a group is treated—
- (a) as holding any shares or interest in shares held by any other company in the group, and
 - (b) as having the same entitlement as any such company to any rights enjoyed by virtue of holding shares or an interest in shares.
- (2) Sub-paragraph (1) is subject to paragraph 17(4) (exclusion of aggregation in case of assets of long-term insurance fund of insurance company).

Effect of earlier no-gain/no-loss transfer

- 10 (1) For the purposes of this Part the period for which a company has held shares is treated as extended by any earlier period during which the shares concerned, or shares from which they are derived, were held—
- (a) by a company from which the shares concerned were transferred to the first-mentioned company on a no-gain/ no-loss transfer, or
 - (b) by a company from which the shares concerned, or shares from which they are derived, were transferred on a previous no-gain/no-loss transfer—
 - (i) to a company within paragraph (a), or
 - (ii) to another company within this paragraph.
- (2) For the purposes of sub-paragraph (1)—
- (a) a “no-gain/no-loss transfer” means a disposal and corresponding acquisition that by virtue of any enactment relating to chargeable gains are deemed to be for a consideration such that no gain or loss accrues to the person making the disposal;
 - (b) a transfer shall be treated as if it had been a no-gain/no- loss transfer if it is a transfer to which subsection (1) of section 171 (transfers within a group) would apply but for subsection (3) of that section.
- (3) Where sub-paragraph (1) applies to extend the period for which a company (“company A”) is treated as having held any shares, that company shall be treated for the purposes of this Part as having had at any time the same entitlement—
- (a) to shares, and
 - (b) to any rights enjoyed by virtue of holding shares,
- as the company (“company B”) that at that time held the shares concerned or, as the case may be, the shares from which they are derived.
- (4) The shares and rights to be so attributed to company A include any holding or entitlement attributed at that time to company B under paragraph 9 (aggregation of holdings of group companies).
- (5) In this paragraph, except in paragraphs (a) to (c) of sub-paragraph (6), “shares” includes an interest in shares.
- (6) For the purposes of this paragraph shares are “derived” from other shares only where—
- (a) a company becomes a co-owner of shares previously owned by it alone, or vice versa,

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- (b) a company's interest in shares as co-owner changes (without the company ceasing to be a co-owner),
- (c) one holding of shares is treated by virtue of section 127 as the same asset as another, or
- (d) there is a sequence of two or more of the occurrences mentioned in paragraphs (a) to (c).

The reference in paragraph (c) to section 127 includes a reference to that provision as applied by any enactment relating to corporation tax.

Effect of deemed disposal and reacquisition

- 11 (1) For the purposes of this Part a company is not regarded as having held shares throughout a period if, at any time during that period, there is a deemed disposal and reacquisition of—
- (a) the shares concerned, or
 - (b) shares, or an interest in shares, from which those shares are derived.
- (2) For the purposes of this Part a company is not regarded as having held an interest in shares throughout a period if, at any time during that period, there is a deemed disposal and reacquisition of—
- (a) the interest concerned, or
 - (b) shares, or an interest in shares, from which that interest is derived.
- (3) In this paragraph—
- “deemed disposal and reacquisition” means a disposal and immediate reacquisition treated as taking place under any enactment relating to corporation tax;
 - “derived” has the same meaning as in paragraph 10.

Effect of repurchase agreement

- 12 (1) This paragraph applies where—
- (a) a company that holds shares in another company transfers the shares under a repurchase agreement, and
 - (b) by virtue of section 263A(1) (agreements for sale and repurchase of securities) the disposal is disregarded for the purposes of the enactments relating to chargeable gains.
- (2) During the period of the repurchase agreement—
- (a) the original owner shall be treated for the purposes of this Part as continuing to hold the shares transferred and accordingly as retaining his entitlement to any rights attached to them, and
 - (b) the interim holder shall be treated for those purposes as not holding the shares transferred and as not becoming entitled to any such rights.
- This is subject to the following qualification.
- (3) If at any time before the end of the period of the repurchase agreement the original owner, or another member of the same group as the original owner, becomes the holder—
- (a) of any of the shares transferred, or

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- (b) of any shares directly or indirectly representing any of the shares transferred, sub-paragraph (2) does not apply after that time in relation to those shares or, as the case may be, in relation to the shares represented by those shares.
- (4) In this paragraph a “repurchase agreement” means an agreement under which—
- (a) a person (“the original owner”) transfers shares to another person (“the interim holder”) under an agreement to sell them, and
- [^{F2}(b) the original owner or a person connected with him—
- (i) is required to buy them back in pursuance of an obligation imposed by, or in consequence of the exercise of an option acquired under, that agreement or any related agreement, or
- (ii) acquires an option to buy them back under that agreement or any related agreement which he subsequently exercises.]
- (5) Any reference in this paragraph to the period of a repurchase agreement is to the period beginning with the transfer of the shares by the original owner to the interim holder and ending with the repurchase of the shares in pursuance of the agreement.

Textual Amendments

- F2** Sch. 7AC para. 12(4)(b) substituted (with effect in accordance with Sch. 38 para. 21(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 38 para. 9](#)

Effect of stock lending arrangements

- 13 (1) This paragraph applies where—
- (a) a company that holds shares in another company transfers the shares under a stock lending arrangement, and
- (b) by virtue of section 263B(2) (stock lending arrangements) the disposal is disregarded for the purposes of the enactments relating to chargeable gains.
- (2) During the period of the stock lending arrangement—
- (a) the lender shall be treated for the purposes of this Part as continuing to hold the shares transferred and accordingly as retaining his entitlement to any rights attached to them, and
- (b) the borrower shall be treated for those purposes as not holding the shares transferred and as not becoming entitled to any such rights.
- This is subject to the following qualification.
- (3) If at any time before the end of the period of the stock lending arrangement the lender, or another member of the same group as the lender, becomes the holder—
- (a) of any of the shares transferred, or
- (b) of any shares directly or indirectly representing any of the shares transferred, sub-paragraph (2) does not apply after that time in relation to those shares or, as the case may be, in relation to the shares represented by those shares.
- (4) In this paragraph a “stock lending arrangement” means arrangements between two persons (“the borrower” and “the lender”) under which—
- (a) the lender transfers shares to the borrower otherwise than by way of sale, and

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- (b) a requirement is imposed on the borrower to transfer those shares back to the lender otherwise than by way of sale.
- (5) Any reference in this paragraph to the period of a stock lending arrangement is to the period beginning with the transfer of the shares by the lender to the borrower and ending—
- (a) with the transfer of the shares back to the lender in pursuance of the arrangement, or
 - (b) when it becomes apparent that the requirement for the borrower to make a transfer back to the lender will not be complied with.
- (6) The following provisions apply for the purposes of this paragraph as they apply for the purposes of section 263B—
- (a) subsections (5) and (6) of that section (references to transfer back of securities to include transfer of other securities of the same description);
 - (b) section 263C (references to transfer back of securities to include payment in respect of redemption).

Effect in relation to company invested in of earlier company reconstruction etc

- 14 (1) This paragraph applies where shares in one company (“company X”)—
- (a) are exchanged (or deemed to be exchanged) for shares in another company (“company Y”), or
 - (b) are deemed to be exchanged by virtue of section 136 for shares in company X and shares in another company (“company Y”),
- in circumstances such that, under section 127 as that section applies by virtue of section 135 or 136, the original shares and the new holding are treated as the same asset.
- (2) Where company Y—
- (a) is the company invested in, and is accordingly the company by reference to which the requirement of paragraph 7 (the substantial shareholding requirement) falls to be met, or
 - (b) is a company by reference to which, by virtue of this paragraph, that requirement may be met, or
 - (c) is a company by reference to which, by virtue of paragraph 15 (effect of earlier demerger) that requirement may be met,
- that requirement may instead be met, in relation to times before the exchange (or deemed exchange), by reference to company X.
- (3) If in any case that requirement can be met by virtue of this paragraph (or by virtue of this paragraph together with paragraph 15), it shall be treated as met.
- (4) In sub-paragraph (1) “original shares” and “new holding” shall be construed in accordance with sections 126, 127, 135 and 136.

Effect in relation to company invested in of earlier demerger

- 15 (1) This paragraph applies where shares in one company (“the subsidiary”) are transferred by another company (“the parent company”) on a demerger.
- (2) Where the subsidiary—

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- (a) is the company invested in, and is accordingly the company by reference to which the requirement of paragraph 7 (the substantial shareholding requirement) falls to be met, or
 - (b) is a company by reference to which, by virtue of this paragraph, that requirement may be met, or
 - (c) is a company by reference to which, by virtue of paragraph 14 (effect of earlier company reconstruction etc), that requirement may be met,
- that requirement may instead be met, in relation to times before the transfer, by reference to the parent company.
- (3) If in any case that requirement can be met by virtue of this paragraph (or by virtue of this paragraph together with paragraph 14), it shall be treated as met.
- (4) In this paragraph a “transfer of shares on a demerger” means a transfer such that, by virtue of section 192(2)(b), sections 126 to 130 apply as if the parent company and the subsidiary were the same company and the transfer were a reorganisation of that company’s share capital not involving a disposal or acquisition.

Effect of investing company’s liquidation

- 16 Where assets of the investing company, or of a company that is a member of the same group as the investing 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 Part 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).

Special rules for assets of insurance company’s long-term insurance fund

- 17 (1) In the following two cases paragraph 8(1) (meaning of substantial shareholding) has effect as if, in paragraphs (a), (b) and (c), “30%” were substituted for “10%”.
- (2) The first case is where the investing company is an insurance company and the disposal is of an asset of its long-term insurance fund.
- (3) The second case is where—
- (a) the investing company is a 51% subsidiary of an insurance company, and
 - (b) the insurance company holds as an asset of its long-term insurance fund shares or an interest in shares—
 - (i) in the investing company, or
 - (ii) in another company through which it owns shares in the investing company.

The reference in paragraph (b)(ii) to owning shares through another company has the same meaning as in section 838 of the Taxes Act (subsidiaries).

- (4) Where the investing company is a member of a group that includes an insurance company, paragraph 9 (aggregation of holdings of group companies) does not apply in relation to shares or an interest in shares held by the insurance company as assets of its long-term insurance fund.
- (5) In this paragraph “insurance company” and “long-term insurance fund” have the meanings given by section 431(2) of the Taxes Act.]

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Modifications etc. (not altering text)

- C1** Sch. 7AC para. 17 modified by [The Friendly Societies \(Modification of the Corporation Tax Acts\) Regulations 1997 \(S.I. 1997/473\)](#), **reg. 50A** (as inserted (30.1.2003) by [S.I. 2003/23](#), regs. 1(1), 9)

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