

Status: Point in time view as at 24/07/2002.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, SCHEDULE 10. (See end of Document for details)

SCHEDULES

SCHEDULE 10 **U.K.**

Section 47

CHARGEABLE GAINS: TAPER RELIEF: MINOR AMENDMENTS

Introduction

- 1 Schedule A1 to the Taxation of Chargeable Gains Act 1992 (c. 12) (taper relief) is amended as follows.

Periods of share ownership that do not count because of change of activity by company

- 2 Paragraph 11 (periods of share ownership not to count where there is a change of activity by the company) shall cease to have effect in relation to disposals on or after 17th April 2002.

Periods of share ownership not to count where company is not active

- 3 (1) After that paragraph insert—

“Periods of share ownership not to count if company is not active

11A (1) Where there is a disposal of an asset consisting of shares in a company, any period after 5th April 1998 during which the asset consisted of shares in a company that—

- (a) was a close company, and
- (b) was not active,

shall not count for the purposes of taper relief.

(2) Subject to the following provisions of this paragraph, a company is regarded as active at any time when—

- (a) it is carrying on a business of any description,
- (b) it is preparing to carry on a business of any description, or
- (c) it or another person is winding up the affairs of a business of any description that it has ceased to carry on.

(3) In sub-paragraph (2) above—

- (a) references to a business include a business that is not conducted on a commercial basis or with a view to the realisation of a profit, and
- (b) references to carrying on a business include holding assets and managing them.

(4) For the purposes of this paragraph a company is not regarded as active by reason only of its doing all or any of the following—

- (a) holding money (in any currency) in cash or on deposit;
- (b) holding other assets whose total value is insignificant;

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- (c) holding shares in or debentures of a company that is not active;
 - (d) making loans to an associated company or to a participator or an associate of a participator;
 - (e) carrying out administrative functions in order to comply with requirements of the Companies Act 1985 or the Companies (Northern Ireland) Order 1986 or other regulatory requirements.
- (5) Notwithstanding anything in sub-paragraphs (2) to (4) above a company shall be treated as active for the purposes of this paragraph if—
- (a) it is the holding company of a group of companies that contains at least one active company, or
 - (b) it has a qualifying shareholding in a joint venture company or is the holding company of a group of companies any member of which has a qualifying shareholding in a joint venture company.
- (6) In this paragraph “associated company” has the meaning given by section 416 of the Taxes Act and “participator” and “associate” have the meaning given by section 417 of that Act.
- (7) Any reference in this paragraph to shares in or debentures of a company includes an interest in, or option in respect of, shares in or debentures of a company.”.
- (2) The amendment made by sub-paragraph (1) has effect in relation to disposals on or after 17th April 2002.

Meaning of “holding company”

- 4 (1) In paragraph 22(1) (interpretation) for the definition of “holding company” substitute—
- ““holding company” means a company that has one or more 51% subsidiaries;”.
- (2) In paragraph 23 (provisions as to holdings in joint venture companies), omit the following provisions—
- (a) the final sentence of sub-paragraph (4);
 - (b) sub-paragraph (5);
 - (c) in sub-paragraph (7), the words “, (5)(b)”.
- (3) The amendments in this paragraph apply to disposals on or after 17th April 2002 and as they so apply have effect in relation to periods of ownership on or after that date.

Meaning of “interest in share”s

- 5 (1) In paragraph 22(1) (interpretation), at the appropriate place insert—
- ““interest in shares” means an interest as a co-owner (whether the shares are owned jointly or in common, and whether or not the interests of the co-owners are equal), and “interest in debentures”, in relation to any debentures, has a corresponding meaning;”.
- (2) The amendment in sub-paragraph (1) applies to disposals on or after 17th April 2002 and as it so applies has effect in relation to periods of ownership on or after that date.

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Meaning of “joint venture company” and “qualifying shareholding”

- 6 (1) In paragraph 22(1) (interpretation), at the appropriate places insert—
- ““joint venture company” has the meaning given by paragraph 23(2) below;”;
- ““qualifying shareholding”, in relation to a joint venture company, has the meaning given by paragraph 23(3) below;”.
- (2) In paragraph 23(2) and (3) for “this paragraph” substitute “ this Schedule ”.
- (3) The amendments in this paragraph have effect in relation to disposals on or after 17th April 2002.

Meaning of “ordinary share capital”

- 7 (1) In paragraph 22(1) (interpretation) at the appropriate place insert—
- ““ordinary share capital” has the meaning given by section 832(1) of the Taxes Act;”.
- (2) Omit paragraphs 23(10) and 24(6).
- (3) The amendments in this paragraph apply to disposals on or after 17th April 2002.

Debentures to be treated as shares

- 8 (1) In paragraph 22(1) (interpretation), in the definition of “shares” for “includes any securities of that company” substitute—
- “includes—
- (a) any securities of that company, and
- (b) any debentures of that company that are deemed, by virtue of section 251(6), to be securities for the purposes of that section”.
- (2) The amendment made by sub-paragraph (1) applies in relation to disposals on or after 6th April 2001 (so that assets disposed of on or after that date that are treated as shares by virtue of that sub-paragraph shall be treated as having been shares in relation to all times relevant for the purposes of Schedule A1).

This is subject to the following provisions.

- (3) In relation to any time before 17th April 2002, the amendment made by sub-paragraph (1) does not apply to the references to shares in the following provisions of that Schedule—
- (a) paragraph 5 (conditions for assets other than shares to qualify as business assets);
- (b) paragraph 6A (meaning of “material interest” for purposes of paragraph 6);
- (c) paragraph 11 (periods of share ownership not to count where there is a change of activity by the company), except sub-paragraph (6);
- (d) paragraph 11A (periods of share ownership not to count if company is not active);
- (e) paragraph 12 (periods of share ownership not to count in a case of value-shifting);

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- (f) the definition of “unlisted company” in paragraph 22(1).
- (4) The amendment made by sub-paragraph (1) does not apply to the references to shares in paragraph 18(1) of that Schedule (special rules for assets acquired in the reconstruction of mutual businesses etc) in so far as they relate to shares issued before 17th April 2002.

Meaning of “trading company”

- 9 (1) In paragraph 22(1) (interpretation), for the definition of “trading company” substitute—

““trading company” has the meaning given by paragraph 22A below;”.

- (2) After that paragraph insert—

“Meaning of “trading company”

22A(1) In this Schedule “trading company” means a company carrying on trading activities whose activities do not include to a substantial extent activities other than trading activities.

- (2) For the purposes of sub-paragraph (1) above “trading activities” means activities carried on by the company—

- (a) in the course of, or for the purposes of, a trade being carried on by it,
- (b) for the purposes of a trade that it is preparing to carry on,
- (c) with a view to its acquiring or starting to carry on a trade, or
- (d) with a view to its acquiring a significant interest in the share capital of another company that—

(i) is a trading company or the holding company of a trading group, and

(ii) if the acquiring company is a member of a group of companies, is not a member of that group.

- (3) Activities do not qualify as trading activities under sub-paragraph (2)(c) or (d) above unless the acquisition is made, or (as the case may be) the company starts to carry on the trade, as soon as is reasonably practicable in the circumstances.

- (4) The reference in sub-paragraph (2)(d) above to the acquisition of a significant interest in the share capital of another company is to an acquisition of ordinary share capital in the other company—

- (a) such as would make that company a 51% subsidiary of the acquiring company, or
- (b) such as would give the acquiring company a qualifying shareholding in a joint venture company without making the two companies members of the same group of companies.”.

- (3) The amendments in this paragraph apply to disposals on or after 17th April 2002 and as they so apply have effect in relation to periods of ownership on or after that date.

Meaning of “trading group”

- 10 (1) In paragraph 22(1) (interpretation), for the definition of “trading group” substitute—

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““trading group” has the meaning given by paragraph 22B below;”.

(2) After paragraph 22A (inserted by paragraph 9 above) insert—

“Meaning of “trading group”

22B (1) In this Schedule “trading group” means a group of companies—

- (a) one or more of whose members carry on trading activities, and
- (b) the activities of whose members, taken together, do not include to a substantial extent activities other than trading activities.

(2) For the purposes of sub-paragraph (1) above “trading activities” means activities carried on by a member of the group—

- (a) in the course of, or for the purposes of, a trade being carried on by any member of the group,
- (b) for the purposes of a trade that any member of the group is preparing to carry on,
- (c) with a view to any member of the group acquiring or starting to carry on a trade, or
- (d) with a view to any member of the group acquiring a significant interest in the share capital of another company that—
 - (i) is a trading company or the holding company of a trading group, and
 - (ii) is not a member of the same group of companies as the acquiring company.

(3) Activities do not qualify as trading activities under sub-paragraph (2)(c) or (d) above unless the acquisition is made, or (as the case may be) the group member in question starts to carry on the trade, as soon as is reasonably practicable in the circumstances.

(4) The reference in sub-paragraph (2)(d) above to the acquisition of a significant interest in the share capital of another company is to an acquisition of ordinary share capital in the other company—

- (a) such as would make that company a member of the same group of companies as the acquiring company, or
- (b) such as would give the acquiring company a qualifying shareholding in a joint venture company without making the joint venture companies a member of the same group of companies as the acquiring company.

(5) For the purposes of this paragraph the activities of the members of the group shall be treated as one business (with the result that activities are disregarded to the extent that they are intra-group activities).”.

(3) The amendments in this paragraph apply to disposals on or after 17th April 2002 and as they so apply have effect in relation to periods of ownership on or after that date.

Joint venture companies

11 (1) Paragraph 23 (qualifying shareholding in joint venture companies) is amended as follows.

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- (2) In sub-paragraph (2)(b) (meaning of “joint venture company”: requirement that 75% of ordinary share capital held by not more than five companies), for “companies” substitute “ persons ”.
- (3) In sub-paragraph (3)(a) and (b) (meaning of “qualifying shareholding”: holding of more than 30% of ordinary share capital), for “more than 30%” substitute “ 10% or more ”.
- (4) After sub-paragraph (7) insert—
 - “(7A) For the purposes of this paragraph the activities of a joint venture company that is a holding company and its 51% subsidiaries shall be treated as a single business (so that activities are disregarded to the extent that they are intra-group activities).”.
- (5) The amendments in this paragraph apply to disposals on or after 17th April 2002 and as they so apply have effect in relation to periods of ownership on or after that date.

Joint enterprise companies

- 12 (1) Paragraph 24 (joint enterprise companies: relevant connection) is amended as follows.
 - (2) In sub-paragraph (2) (meaning of “joint enterprise company”: requirement that 75% of ordinary share capital held by not more than five companies), for “companies” substitute “ persons ”.
 - (3) In sub-paragraph (4)(a) and (b) (meaning of “qualifying shareholding”: holding of more than 30% of ordinary share capital), for “more than 30%” substitute “ 10% or more ”.
 - (4) The amendments in this paragraph apply to disposals on or after 17th April 2002 and as they so apply have effect in relation to periods of ownership on or after that date.

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