

Status: Point in time view as at 24/07/2002.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, Part 12. (See end of Document for details)

SCHEDULES

SCHEDULE 29

GAINS AND LOSSES OF A COMPANY FROM INTANGIBLE FIXED ASSETS

Modifications etc. (not altering text)

C1 Sch. 29 applied (with modifications) (15.8.2002) by [S.I. 2002/1967, regs. 3-6](#)

PART 12

TRANSACTIONS BETWEEN RELATED PARTIES

Transfer between company and related party treated as being at market value

- 92 (1) Where there is a transfer of an intangible asset from a company to a related party or to a company from a related party and, in either case, the asset is a chargeable intangible asset—
- (a) in relation to the transferor immediately before the transfer, or
 - (b) in relation to the transferee immediately after the transfer,
- the transfer is treated for all purposes of the Taxes Acts (as regards both the transferor and the transferee) as being at market value.

This is subject to the following two exceptions.

- (2) The first exception is where the consideration for the transfer—
- (a) falls to be adjusted for tax purposes under Schedule 28AA to the Taxes Act 1988 (provision not at arm's length), or
 - (b) falls within that Schedule without falling to be so adjusted.
- (3) For the purposes of sub-paragraph (2)(b) the consideration for a transfer falls within Schedule 28AA to the Taxes Act 1988 without falling to be adjusted under that Schedule in a case where—
- (a) the conditions in paragraph 1(1) of that Schedule are met,
 - (b) the actual provision does not differ from the arm's length provision, and
 - (c) if the actual provision had differed from the arm's length provision in such a way as to confer a potential advantage in relation to United Kingdom taxation as defined in paragraph 5(1) of that Schedule, paragraph 5(2) of that Schedule would not have applied (under which there is taken to be no such potential advantage if certain conditions are met).
- (4) The second exception is where any provision of this Schedule applies so as to make the transfer tax-neutral.

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- (5) In sub-paragraph (1) “market value” means the price the asset might reasonably be expected to fetch on a sale in the open market.

Exclusion of roll-over relief in case of part realisation involving related party

- 93 Part 7 (roll-over relief in case of reinvestment) does not apply in relation to the part realisation by a company of an intangible fixed asset if a person who is a related party in relation to the company acquires an interest of any description—
- (a) in that asset, or
 - (b) in an asset whose value is derived in whole or in part from that asset, as a result of, or in connection with, the part realisation.

Delayed payment of royalty payable by company to related party

- 94 (1) This paragraph applies where a royalty is payable by a company to or for the benefit of a related party.
- (2) If—
- (a) the royalty is not paid in full within the period of twelve months after the end of the period of account in which a debit in respect of it is recognised by the company for accounting purposes, and
 - (b) credits representing the full amount of the royalty are not brought into account under this Schedule in any accounting period by the person to whom it is payable,
- the royalty shall be brought into account for the purposes of this Schedule only when it is paid.

Meaning of “related party”

- 95 (1) For the purposes of this Schedule a person (“P”) is a “related party” in relation to a company (“C”) in the following cases:

Case One

P is a company and either—

- (a) P has control of, or holds a major interest in, C, or
- (b) C has control of, or holds a major interest in, P.

Case Two

P is a company and P and C are both under the control of the same person (but see sub-paragraph (2)).

Case Three

C is a close company and P is—

- (a) a participator in C, or
- (b) an associate of a participator in C.

- (2) Case Two does not apply if the person controlling both P and C is—
- the Crown,
 - a Minister of the Crown or a government department,

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the Scottish Ministers,
the National Assembly for Wales,
a Minister within the meaning of the Northern Ireland Act 1998 (c. 47) or a Northern Ireland department,
a foreign sovereign power, or
an international organisation.

Meaning of “control” and “major interest”

96 (1) For the purposes of this Part “control”, in relation to a company, is the power of a person to secure—

- (a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company, or
- (b) by virtue of any powers conferred by the articles of association or other document regulating the company or any other company,

that the affairs of the company are conducted in accordance with his wishes.

(2) For the purposes of this Part, a person has a “major interest” in a company if—

- (a) he and one other person together have control of that company, and
- (b) the rights and powers by means of which they have such control represent, in the case of each of them, at least 40% of the total.

The reference in paragraph (a) to two persons together having control of a company is to two persons who, taken together, have the power mentioned in sub-paragraph (1).

(3) Paragraphs 97 to 99 (rights and powers to be taken into account) apply in relation to the determination for the purposes of this Part whether a person has control of, or a major interest in, a company.

Rights and powers to be taken into account: general

97 (1) There shall be attributed to each relevant person—

- (a) rights and powers that he is entitled to acquire at a future date or will, at a future date, become entitled to acquire;
- (b) rights and powers of other persons, to the extent that they are required, or may be required, to be exercised in any one or more of the following ways—
 - (i) on his behalf;
 - (ii) under his direction;
 - (iii) for his benefit;
- (c) rights and powers of a person connected with him;
- (d) rights and powers that would be attributed to a person connected with him if that person were a relevant person.

(2) Sub-paragraph (1)(b) does not apply, in a case where a loan has been made by one person to another, to rights and powers conferred in relation to property of the borrower by the terms of any security relating to the loan.

(3) In sub-paragraph (1)(b) to (d), the references to a person’s rights and powers include rights or powers that he is entitled to acquire at a future date or will, at a future date, become entitled to acquire.

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- (4) In this paragraph a “relevant person” means a person whose rights or powers are relevant to the determination of the question whether a person has control of or a major interest in a company.

Rights and powers to be taken into account: rights and powers held jointly

- 98 (1) References in this Part of this Schedule—
- (a) to rights and powers of a person, or
 - (b) to rights and powers that a person is or will become entitled to acquire,
- include rights or powers that are exercisable by that person, or when acquired will be exercisable by him, only jointly with one or more other persons.
- (2) Sub-paragraph (1) has effect subject to paragraph 99 (partnerships).

Rights and powers to be taken into account: partnerships

- 99 (1) The rights and powers of a person as a member of a partnership shall be disregarded unless he has control of or a major interest in the partnership.
- (2) Whether a person has control of or a major interest in a partnership shall be determined in accordance with paragraphs 96 to 98 as in relation to a company.
- For this purpose references in those paragraphs to any other company shall be read as including any other partnership.

Meaning of “participator” and “associate”

- 100 (1) In this Part “participator”, in relation to a close company, has the meaning it has for the purposes of Part 11 of the Taxes Act 1988 (close companies) (see section 417(1) of that Act), except that it does not include a person by reason only of his being a loan creditor of the company within the meaning of that Part (see section 417(7) to (9) of that Act).
- (2) In this Part “associate”, in relation to a participator in a close company, has the meaning given by section 417(3) of that Act.

Connected persons

- 101 (1) This paragraph explains what is meant in this Part when a person is referred to as being connected with another person.
- Any provision that one person is connected with another means that they are connected with one another.
- (2) A person is connected with an individual if that person is the individual’s wife or husband, or is a relative, or the wife or husband of a relative, of the individual or of the individual’s wife or husband.
- For the purposes of this sub-paragraph “relative” means brother, sister, ancestor or lineal descendant.
- (3) A person in his capacity as trustee of a settlement is connected with—
- (a) any individual who in relation to the settlement is a settlor,
 - (b) any person who is connected with such an individual, and

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- (c) any body corporate that is connected with that settlement.

For the purposes of this sub-paragraph “settlement” and “settlor” have the same meaning as in Chapter 1A of Part 15 of the Taxes Act 1988 (settlements: liability of settlor) (see section 660G(1) and (2) of that Act).

- (4) For the purposes of sub-paragraph (3) above a body corporate is connected with a settlement if—
- (a) it is a close company (or only not a close company because it is not resident in the United Kingdom) and the participators include the trustees of the settlement, or
 - (b) it is controlled by a company falling within paragraph (a) above.
- (5) A person is connected with a company if they are related parties within Case One or Case Two in paragraph 95(1) above.
- (6) For the purposes of sub-paragraph (5) above and for the purposes of paragraph 95 as it applies for the purposes of that sub-paragraph—
- (a) “company” includes any body corporate or unincorporated association, but does not include a partnership; and
 - (b) a unit trust scheme shall be treated as if it were a company and as if the rights of the unit holders were shares in the company.

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