

*Status: Point in time view as at 01/11/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Part 8. (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 8

#### GROUPS OF COMPANIES

##### *Introduction*

- 46 (1) This Part has effect for the purposes of this Schedule to determine whether companies form a group and, where they do, which is the principal company of the group.
- (2) In this Part references to a company apply only to—
- (a) a company within the meaning of the Companies Act 1985 (c. 6) or the Companies (Northern Ireland) Order 1986 (S.I. 1986/ 1032 (N.I. 6));
  - (b) a company (other than a limited liability partnership) constituted under any other Act or by a Royal Charter or letters patent;
  - (c) a company formed under the law of a country or territory outside the United Kingdom;
  - (d) a registered industrial and provident society within the meaning of section 486 of the Taxes Act 1988;
  - (e) an incorporated friendly society within the meaning of the Friendly Societies Act 1992 (c. 40); or
  - (f) a building society.
- (3) In this Schedule the expressions “group” and “subsidiary” shall be construed with any necessary modifications where applied to a company formed under the law of a country outside the United Kingdom.

##### *General rule: a company and its 75% subsidiaries form a group*

- 47 (1) A company (“the principal company of the group”) and all its 75% subsidiaries form a group, and if any of those subsidiaries have 75% subsidiaries the group includes them and their 75% subsidiaries, and so on.
- (2) Sub-paragraph (1) has effect subject to the following provisions of this Part.

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*Membership of group restricted to effective 51% subsidiaries of principal company*

- 48 A group of companies does not include any company (other than the principal company of the group) that is not an effective 51% subsidiary of the principal company of the group.

*Principal company cannot be 75% subsidiary of another company*

- 49 (1) A company cannot be the principal company of a group if it is itself a 75% subsidiary of another company.
- (2) Notwithstanding sub-paragraph (1), where—
- (a) a company (“the subsidiary”) is a 75% subsidiary of another company, and
  - (b) those companies are prevented from being members of the same group by paragraph 48 (the effective 51% subsidiary requirement),
- the subsidiary may, if the requirements of paragraphs 47 and 48 are met, itself be the principal company of another group, unless this enables a further company to be the principal company of a group of which the subsidiary would be a member.

*Company cannot be member of more than one group*

- 50 (1) A company cannot be a member of more than one group.
- (2) If a company would otherwise be a member of two or more groups, the group of which it is a member is determined by applying the following rules (applying the rules successively in the order shown until an answer is obtained).
- (3) In the following provisions the principal company of each group is referred to as the “head of a group”.
- (4) The first rule is that the company is a member of the group of which it would be a member if, in applying paragraph 48 (the effective 51% subsidiary requirement), there were left out of account—
- (a) any amount to which a head of a group is beneficially entitled of any profits available for distribution to equity holders of a head of another group, or
  - (b) any amount to which a head of a group would be beneficially entitled of any assets of a head of another group available for distribution to its equity holders on a winding up.
- (5) The second rule is that the company is a member of the group the head of which is beneficially entitled to a percentage of the 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.
- (6) The third rule is that the company 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.
- (7) The fourth rule is that the company 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.

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The provisions of section 838(2) to (10) of the Taxes Act 1988 apply for the interpretation of this sub-paragraph as they apply for the interpretation of subsection (1)(a) of that section (definition of “51% subsidiary”).

#### *Continuity of identity of group*

- 51 (1) For the purposes of this Schedule—
- (a) a group of companies remains the same group of companies so long as the same company is the principal company of the group, and
  - (b) if 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 a company has ceased to be a member of a group shall be determined accordingly).
- (2) For the purposes of this Schedule 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 is not regarded as the occasion of that or any other company ceasing to be a member of the group.

#### *Meaning of “effective 51% subsidiary”*

- 52 For the purposes of this Schedule a company (“the subsidiary”) is an effective 51% subsidiary of another company (“the parent”) if, and only if, the parent—
- (a) is beneficially entitled to more than 50% of any profits available for distribution to equity holders of the subsidiary, and
  - (b) would be beneficially entitled to more than 50% of any assets of the subsidiary available for distribution to its equity holders on a winding up.

#### *Meaning of equity holder and profits or assets available for distribution*

- 53 (1) 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 paragraphs 50 and 52.
- (2) In that Schedule as it applies for the purposes of those paragraphs—
- (a) for any reference to sections 403C and 413(7) of that Act, or either of those provisions, substitute a reference to those paragraphs;
  - (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).

#### *Supplementary provisions*

- 54 (1) In applying for the purposes of this Part the definition of “75% subsidiary” in section 838 of the Taxes Act 1988, any share capital of a registered industrial and provident society shall be treated as ordinary share capital.
- (2) The provisions of section 170(12) to (14) of the Taxation of Chargeable Gains Act 1992 (c. 12) (application to certain statutory bodies of provisions relating to groups of companies) apply for the purposes of this Part as they apply for the purposes of sections 171 to 181 of that Act.

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