



Finance Act 1977

1977 CHAPTER 36

PART III

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

40 Capital gains: company reconstructions and amalgamations involving exchange of shares etc.

- (1) In sub-paragraph (2) of paragraph 6 of Schedule 7 to the Finance Act 1965 (roll-over relief on exchange of shares) for the words " where the company issuing the shares or debentures has or in consequence of the exchange will have control of the other company " there shall be substituted the words " where the company issuing the shares or debentures holds or in consequence of the exchange will hold more than one quarter of the ordinary share capital of the other company " ; and after that sub-paragraph there shall be inserted—

“(3) In this paragraph ' ordinary share capital ' has the meaning given in section 526(5) of the Income and Corporation Taxes Act 1970.”

- (2) Subject to subsection (3) below, neither the said paragraph 6 nor paragraph 7 of the said Schedule 7 (reconstructions and amalgamations) shall apply to any issue by a company of shares in or debentures of that company in exchange for or in respect of shares in or debentures of another company unless the exchange, reconstruction or amalgamation in question is effected for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to capital gains tax or corporation tax.
- (3) Subsection (2) above shall not affect the operation of paragraph 6 or 7—
- in any case where the person to whom the shares or debentures are issued does not hold more than 5 per cent. of, or of any class of, the shares in or debentures of the second company mentioned in that subsection; or
 - in any case where, before the issue is made, the Board have, on the application of either company mentioned in that subsection, notified the company that the Board are satisfied that the exchange, reconstruction or amalgamation will be

Status: This is the original version (as it was originally enacted).

effected for bona fide commercial reasons and will not form part of any such scheme or arrangements as are there mentioned.

- (4) Any application under subsection (3)(b) above shall be in writing and shall contain particulars of the operations that are to be effected and the Board may, within thirty days of the receipt of the application or of any further particulars previously required under this subsection, by notice require the applicant to furnish further particulars for the purpose of enabling the Board to make their decision; and if any such notice is not complied with within thirty days or such longer period as the Board may allow, the Board need not proceed further on the application.
- (5) The Board shall notify their decision to the applicant within thirty days of receiving the application or, if they give a notice under subsection (4) above, within thirty days of the notice being complied with.
- (6) If the Board notify the applicant that they are not satisfied as mentioned in subsection (3)(b) above or do not notify their decision to the applicant within the time required by subsection (5) above, the applicant may within thirty days of the notification or of that time require the Board to transmit the application, together with any notice given and further particulars furnished under subsection (4) above, to the Special Commissioners ; and in that event any notification by the Special Commissioners shall have effect for the purposes of subsection (3)(b) above as if it were a notification by the Board.
- (7) If any particulars furnished under this section do not fully and accurately disclose all facts and considerations material for the decision of the Board or the Special Commissioners, any resulting notification that the Board or Commissioners are satisfied as mentioned in subsection (3)(b) above shall be void.
- (8) If any tax assessed on a person (the chargeable person) by virtue of subsection (2) above is not paid within six months from the date when it is payable, any other person who—
 - (a) holds all or any part of the shares or debentures that were issued to the chargeable person; and
 - (b) has acquired them without there having been, since their acquisition by the chargeable person, any disposal of them not falling within paragraph 20 of Schedule 7 to the Finance Act 1965 or section 273 of the Taxes Act (disposals between spouses or members of a group of companies),may, at any time within two years from the time when the tax became payable, be assessed and charged (in the name of the chargeable person) to all or, as the case may be, a corresponding part of the unpaid tax ; and a person paying any amount of tax under this subsection shall be entitled to recover a sum of that amount from the chargeable person.
- (9) In this section references to shares or debentures include references to any interests or options to which the provisions mentioned in subsection (2) above apply by virtue of paragraph 15 of Schedule 12 to the Finance Act 1968 or section 58(4) of the Finance Act 1971; and for the purposes of subsection (3)(a) above shares or debentures held by persons connected with the person there mentioned shall be treated as held by him.
- (10) This section applies where the shares or debentures are issued after 19th April 1977 and section 279 of the Taxes Act shall apply only if the earlier occasion mentioned in that section fell on or before that date.