



Taxation of Chargeable Gains Act 1992

1992 CHAPTER 12

PART II

GENERAL PROVISIONS RELATING TO COMPUTATION OF GAINS AND ACQUISITIONS AND DISPOSALS OF ASSETS

CHAPTER II

ASSETS AND DISPOSALS OF ASSETS

Value shifting

29 General provisions

- (1) Without prejudice to the generality of the provisions of this Act as to the transactions which are disposals of assets, any transaction which under the following subsections is to be treated as a disposal of an asset—
 - (a) shall be so treated (with a corresponding acquisition of an interest in the asset) notwithstanding that there is no consideration, and
 - (b) so far as, on the assumption that the parties to the transaction were at arm's length, the party making the disposal could have obtained consideration, or additional consideration, for the disposal, shall be treated as not being at arm's length and the consideration so obtainable, or the additional consideration so obtainable added to the consideration actually passing, shall be treated as the market value of what is acquired.
- (2) If a person having control of a company exercises his control so that value passes out of shares in the company owned by him or a person with whom he is connected, or out of rights over the company exercisable by him or by a person with whom he is connected, and passes into other shares in or rights over the company, that shall be a disposal of the shares or rights out of which the value passes by the person by whom they were owned or exercisable.

- (3) A loss on the disposal of an asset shall not be an allowable loss to the extent to which it is attributable to value having passed out of other assets, being shares in or rights over a company which by virtue of the passing of value are treated as disposed of under subsection (2) above.
- (4) If, after a transaction which results in the owner of land or of any other description of property becoming the lessee of the property there is any adjustment of the rights and liabilities under the lease, whether or not involving the grant of a new lease, which is as a whole favourable to the lessor, that shall be a disposal by the lessee of an interest in the property.
- (5) If an asset is subject to any description of right or restriction the extinction or abrogation, in whole or in part, of the right or restriction by the person entitled to enforce it shall be a disposal by him of the right or restriction.

30 Tax-free benefits

- (1) This section has effect as respects the disposal of an asset if a scheme has been effected or arrangements have been made (whether before or after the disposal) whereby—
 - (a) the value of the asset or a relevant asset has been materially reduced, and
 - (b) a tax-free benefit has been or will be conferred—
 - (i) on the person making the disposal or a person with whom he is connected, or
 - (ii) subject to subsection (4) below, on any other person.
- (2) For the purposes of this section, where the asset disposed of by a company (“the disposing company”) consists of shares in, or securities of, another company, another asset is a relevant asset if, at the time of the disposal, it is owned by a company associated with the disposing company; but no account shall be taken of any reduction in the value of a relevant asset except in a case where—
 - (a) during the period beginning with the reduction in value and ending immediately before the disposal by the disposing company, there is no disposal of the asset to any person, other than a disposal falling within section 171(1),
 - (b) no disposal of the asset is treated as having occurred during that period by virtue of section 178 or 179, and
 - (c) if the reduction had not taken place but any consideration given for the relevant asset and any other material circumstances (including any consideration given before the disposal for the asset disposed of) were unchanged, the value of the asset disposed of would, at the time of the disposal, have been materially greater;

and in this subsection “securities” has the same meaning as in section 132.
- (3) For the purposes of subsection (1)(b) above a benefit is conferred on a person if he becomes entitled to any money or money’s worth or the value of any asset in which he has an interest is increased or he is wholly or partly relieved from any liability to which he is subject; and a benefit is tax-free unless it is required, on the occasion on which it is conferred on the person in question, to be brought into account in computing his income, profits or gains for the purposes of income tax, capital gains tax or corporation tax.

- (4) This section shall not apply by virtue of subsection (1)(b)(ii) above if it is shown that avoidance of tax was not the main purpose or one of the main purposes of the scheme or arrangements in question.
- (5) Where this section has effect in relation to any disposal, any allowable loss or chargeable gain accruing on the disposal shall be calculated as if the consideration for the disposal were increased by such amount as appears to the inspector, or on appeal the Commissioners concerned, to be just and reasonable having regard to the scheme or arrangements and the tax-free benefit in question.
- (6) Where—
 - (a) by virtue of subsection (5) above the consideration for the disposal of an asset has been treated as increased, and
 - (b) the benefit taken into account under subsection (1)(b) above was an increase in the value of another asset,
 any allowable loss or chargeable gain accruing on the first disposal of the other asset after the increase in its value shall be calculated as if the consideration for that disposal were reduced by such amount as appears to the inspector, or on appeal the Commissioners concerned, to be just and reasonable having regard to the scheme or arrangements in question and the increase made in relation to the disposal mentioned in paragraph (a) above.
- (7) References in this section to a disposal do not include references to any disposal falling within section 58(1), 62(4) or 171(1).
- (8) References in this section, in relation to any disposal, to a reduction in the value of an asset, where the asset consists of shares owned by a company in another company, shall be interpreted in accordance with sections 31 to 33 and, in those sections, the disposal, the asset and those companies are referred to respectively as “the section 30 disposal”, “the principal asset”, “the first company” and “the second company”.
- (9) In relation to a case in which the disposal of an asset precedes its acquisition the references in subsections (1)(a) and (2) above to a reduction shall be read as including a reference to an increase.

31 Distributions within a group followed by a disposal of shares

- (1) The references in section 30 to a reduction in the value of an asset, in the case mentioned in subsection (8) of that section, do not include a reduction attributable to the payment of a dividend by the second company at a time when it and the first company are associated, except to the extent (if any) that the dividend is attributable to chargeable profits of the second company and, in such a case, the tax-free benefit shall be ascertained without regard to any part of the dividend that is not attributable to such profits.
- (2) Subsections (3) to (11) below apply for the interpretation of subsection (1) above.
- (3) Chargeable profits shall be ascertained as follows—
 - (a) the distributable profits of any company are chargeable profits of that company to the extent that they are profits arising on a transaction caught by this section, and
 - (b) where any company makes a distribution attributable wholly or partly to chargeable profits (including any profits that are chargeable profits by virtue

of this paragraph) to another company, the distributable profits of the other company, so far as they represent that distribution or so much of it as was attributable to chargeable profits, are chargeable profits of the other company, and for this purpose any loss or other amount to be set against the profits of a company in determining the distributable profits shall be set first against profits other than the profits so arising or, as the case may be, representing so much of the distribution as was attributable to chargeable profits.

- (4) The distributable profits of a company are such profits computed on a commercial basis as, after allowing for any provision properly made for tax, the company is empowered, assuming sufficient funds, to distribute to persons entitled to participate in the profits of the company.
- (5) Profits of a company (“company A”) are profits arising on a transaction caught by this section where each of the following 3 conditions is satisfied.
- (6) The first condition is that the transaction is—
 - (a) a disposal of an asset by company A to another company in circumstances such that company A and the other company are treated as mentioned in section 171(1), or
 - (b) an exchange, or a transaction treated for the purposes of section 135(2) and (3) as an exchange, of shares in or debentures of a company held by company A for shares in or debentures of another company, being a company associated with company A immediately after the transaction, and is treated by virtue of section 135(3) as a reorganisation of share capital, or
 - (c) a revaluation of an asset in the accounting records of company A.

In the following conditions the “asset with enhanced value” means (subject to section 33), in the paragraph (a) case, the asset acquired by the person to whom the disposal is made, in the paragraph (b) case, the shares in or debentures of the other company and, in the paragraph (c) case, the revalued asset.

- (7) The second condition is that—
 - (a) during the period beginning with the transaction referred to in subsection (6) above and ending immediately before the section 30 disposal, there is no disposal of the asset with enhanced value to any person, other than a disposal falling within section 171(1), and
 - (b) no disposal of the asset with enhanced value is treated as having occurred during that period by virtue of section 178 or 179.
- (8) The third condition is that, immediately after the section 30 disposal, the asset with enhanced value is owned by a person other than the company making that disposal or a company associated with it.
- (9) The conditions in subsections (6) to (8) above are not satisfied if—
 - (a) at the time of the transaction referred to in subsection (6) above, company A carries on a trade and a profit on a disposal of the asset with enhanced value would form part of the trading profits, or
 - (b) by reason of the nature of the asset with enhanced value, a disposal of it could give rise neither to a chargeable gain nor to an allowable loss, or
 - (c) immediately before the section 30 disposal, the company owning the asset with enhanced value carries on a trade and a profit on a disposal of the asset would form part of the trading profits.

- (10) The amount of chargeable profits of a company to be attributed to any distribution made by the company at any time in respect of any class of shares, securities or rights shall be ascertained by—
- (a) determining the total of distributable profits, and the total of chargeable profits, that remains after allowing for earlier distributions made in respect of that or any other class of shares, securities or rights, and for distributions made at or to be made after that time in respect of other classes of shares, securities or rights, and
 - (b) attributing first to that distribution distributable profits other than chargeable profits.
- (11) The amount of chargeable profits of a company to be attributed to any part of a distribution made at any time to which a person is entitled by virtue of any part of his holding of any class of shares, securities or rights, shall be such proportion of the chargeable profits as are attributable under subsection (10) above to the distributions made at that time in respect of that class as corresponds to that part of his holding.

32 Disposals within a group followed by a disposal of shares

- (1) The references in section 30 to a reduction in the value of an asset, in the case mentioned in subsection (8) of that section, do not include a reduction attributable to the disposal of any asset (“the underlying asset”) by the second company at a time when it and the first company are associated, being a disposal falling within section 171(1), except in a case within subsection (2) below.
- (2) A case is within this subsection if the amount or value of the actual consideration for the disposal of the underlying asset—
- (a) is less than the market value of the underlying asset, and
 - (b) is less than the cost of the underlying asset,
- unless the disposal 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 corporation tax.
- (3) For the purposes of subsection (2) above, the cost of an asset owned by a company is the aggregate of—
- (a) any capital expenditure incurred by the company in acquiring or providing the asset, and
 - (b) any other capital expenditure incurred by the company in respect of the asset while owned by that company.
- (4) For the purposes of this section, where the disposal of the underlying asset is a part disposal, the reference in subsection (2)(a) above to the market value of the underlying asset is to the market value of the asset acquired by the person to whom the disposal is made and the amounts to be attributed to the underlying asset under paragraphs (a) and (b) of subsection (3) above shall be reduced to the appropriate proportion of those amounts, that is—
- (a) the proportion of capital expenditure in respect of the underlying asset properly attributed in the accounting records of the company to the asset acquired by the person to whom the disposal is made, or
 - (b) where paragraph (a) above does not apply, such proportion as appears to the inspector, or on appeal the Commissioners concerned, to be just and reasonable.

- (5) Where by virtue of a distribution in the course of dissolving or winding up the second company the first company is treated as disposing of an interest in the principal asset, the exception mentioned in subsection (1) above does not apply.

33 Provisions supplementary to sections 30 to 32

- (1) For the purposes of sections 30(2) and 31(7) to (9), subsections (2) to (6) below apply for the purpose of determining in the case of any asset (“the original asset”) whether it is subsequently disposed of or treated as disposed of or owned or any other condition is satisfied in respect of it.
- (2) References in sections 30(2)(a) and (b) and 31(7) to a disposal are to a disposal other than a part disposal.
- (3) References to an asset are to the original asset or, where at a later time one or more assets are treated by virtue of subsections (5) or (6) below as the same as the original asset—
- (a) if no disposal falling within paragraph (a) or (b) of section 30(2) or, as the case may be, of 31(7) has occurred, those references are to the asset so treated or, as the case may be, all the assets so treated, and
 - (b) in any other case, those references are to an asset or, as the case may be, all the assets representing that part of the value of the original asset that remains after allowing for earlier disposals falling within the paragraphs concerned,
- references in this subsection to a disposal including a disposal which would fall within the paragraphs concerned but for subsection (2) above.
- (4) Where by virtue of subsection (3) above those references are to 2 or more assets—
- (a) those assets shall be treated as if they were a single asset,
 - (b) any disposal of any one of them is to be treated as a part disposal, and
 - (c) the reference in section 30(2) to the asset owned at the time of the disposal by a company associated with the disposing company and the reference in section 31(8) to the asset with enhanced value is to all or any of those assets.
- (5) Where there is a part disposal of an asset, that asset and the asset acquired by the person to whom the disposal is made are to be treated as the same.
- (6) Where the value of an asset is derived from any other asset in the ownership of the same or an associated company, in a case where assets have been merged or divided or have changed their nature or rights or interests in or over assets have been created or extinguished, the first asset is to be treated as the same as the second.
- (7) For the purposes of section 30(2), where account is to be taken under that subsection of a reduction in the value of a relevant asset and at the time of the disposal by the disposing company referred to in that subsection—
- (a) references to the relevant asset are by virtue of this section references to 2 or more assets treated as a single asset, and
 - (b) one or more but not all of those assets are owned by a company associated with the disposing company,
- the amount of the reduction in the value of the relevant asset to be taken into account by virtue of that subsection shall be reduced to such amount as appears to the inspector, or on appeal the Commissioners concerned, to be just and reasonable.
- (8) For the purposes of section 31, where—

- (a) a dividend paid by the second company is attributable to chargeable profits of that company, and
 - (b) the condition in subsection (7), (8) or (9)(c) of that section is satisfied by reference to an asset, or assets treated as a single asset, treated by virtue of subsection (3)(b) above as the same as the asset with enhanced value,
- the amount of the reduction in value of the principal asset shall be reduced to such amount as appears to the inspector, or on appeal the Commissioners concerned, to be just and reasonable.
- (9) For the purposes of sections 30 to 32 and this section, companies are associated if they are members of the same group.
 - (10) Section 170(2) to (11) applies for the purposes of sections 30 to 32 and this section as it applies for the purposes of that section.

34 Transactions treated as a reorganisation of share capital

- (1) Where—
 - (a) but for sections 127 and 135(3), section 30 would have effect as respects the disposal by a company (“the disposing company”) of an asset consisting of shares in or debentures of another company (“the original holding”) in exchange for shares in or debentures of a further company which, immediately after the disposal, is not a member of the same group as the disposing company, and
 - (b) if section 30 had effect as respects that disposal, any allowable loss or chargeable gain accruing on the disposal would be calculated as if the consideration for the disposal were increased by an amount,the disposing company shall be treated for the purposes of section 128(3) as receiving, on the reorganisation of share capital that is treated as occurring by virtue of section 135(3), that amount for the disposal of the original holding.
- (2) For the purposes of subsection (1) above it shall be assumed that section 136 has effect generally for the purposes of this Act, and in that subsection “group” has the same meaning as in sections 30 to 33.