



# Corporation Tax Act 2010

## 2010 CHAPTER 4

### PART 4

#### LOSS RELIEF

### CHAPTER 5

#### LOSSES ON DISPOSAL OF SHARES

##### *Qualifying trading companies: the requirements*

#### **78 Qualifying trading companies**

- (1) For the purposes of this Chapter a qualifying trading company is a company which meets each of conditions A to D.
- (2) Condition A is that the company either—
  - (a) meets each of the following requirements on the date of the disposal—
    - (i) the trading requirement (see section 79),
    - (ii) the control and independence requirement (see section 81),
    - (iii) the qualifying subsidiaries requirement (see section 82), and
    - (iv) the property managing subsidiaries requirement (see section 83), or
  - (b) has ceased to meet any of those requirements at a time which is not more than 3 years before that date and has not since that time been an excluded company, an investment company or a trading company.
- (3) Condition B is that the company either—
  - (a) has met each of the requirements mentioned in condition A for a continuous period of 6 years ending on that date or at that time, or
  - (b) has met each of those requirements for a shorter continuous period ending on that date or at that time and has not before the beginning of that period been an excluded company, an investment company or a trading company.

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- (4) Condition C is that the company—
  - (a) met the gross assets requirement (see section 84) both immediately before and immediately after the issue of the shares in respect of which the share loss relief is claimed, and
  - (b) met the unquoted status requirement (see section 85) at the relevant time within the meaning of that section.
- (5) Condition D is that the company has carried on its business wholly or mainly in the United Kingdom throughout the period—
  - (a) beginning with the incorporation of the company or, if later, 12 months before the shares in question were issued, and
  - (b) ending with the date of the disposal.

## **79 The trading requirement**

- (1) The trading requirement is that—
  - (a) the company, ignoring any incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, or
  - (b) the company is a parent company and the business of the group does not consist wholly or as to a substantial part in the carrying on of non-qualifying activities.
- (2) If the company intends that one or more other companies should become its qualifying subsidiaries with a view to their carrying on one or more qualifying trades—
  - (a) the company is treated as a parent company for the purposes of subsection (1)(b), and
  - (b) the reference in subsection (1)(b) to the group includes the company and any existing or future company that will be its qualifying subsidiary after the intention in question is carried into effect.

This subsection does not apply at any time after the abandonment of that intention.

- (3) For the purpose of subsection (1)(b) the business of the group means what would be the business of the group if the activities of the group companies taken together were regarded as one business.
- (4) For the purpose of determining the business of a group, activities are ignored so far as they are activities carried on by a mainly trading subsidiary otherwise than for its main purpose.
- (5) For the purposes of determining the business of a group, activities of a group company are ignored so far as they consist in—
  - (a) the holding of shares in or securities of a qualifying subsidiary of the parent company,
  - (b) the making of loans to another group company,
  - (c) the holding and managing of property used by a group company for the purpose of one or more qualifying trades carried on by a group company, or
  - (d) the holding and managing of property used by a group company for the purpose of research and development from which it is intended—
    - (i) that a qualifying trade to be carried on by a group company will be derived, or

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- (ii) that a qualifying trade carried on or to be carried on by a group company will benefit.
- (6) Any reference in subsection (5)(d)(i) or (ii) to a group company includes a reference to any existing or future company which will be a group company at any future time.
- (7) In this section—
- “excluded activities” has the meaning given by section 192 of ITA 2007 read with sections 193 to 199 of that Act,
  - “group” means a parent company and its qualifying subsidiaries,
  - “group company”, in relation to a group, means the parent company or any of its qualifying subsidiaries,
  - “incidental purposes” means purposes having no significant effect (other than in relation to incidental matters) on the extent of the activities of the company in question,
  - “mainly trading subsidiary” means a subsidiary which, apart from incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, and any reference to the main purpose of such a subsidiary is to be read accordingly,
  - “non-qualifying activities” means—
    - (a) excluded activities, and
    - (b) activities (other than research and development) carried on otherwise than in the course of a trade,
  - “parent company” means a company that has one or more qualifying subsidiaries,
  - “qualifying subsidiary” is to be read in accordance with section 191 of ITA 2007,
  - “qualifying trade” has the meaning given by section 189 of that Act, and
  - “research and development” has the meaning given by section 1138 of this Act.
- (8) In sections 189(1)(b) and 194(4)(c) of ITA 2007 (as applied by subsection (7) for the purposes of the definitions of “excluded activities” and “qualifying trade”) “period B” means the continuous period that is relevant for the purposes of section 78(3).
- (9) In section 195 of ITA 2007 (as applied by subsection (7) for the purpose of the definition of “excluded activities”), references to the issuing company are to be read as references to the company mentioned in subsection (1).

## **80 Ceasing to meet trading requirement because of administration etc**

- (1) A company is not regarded as ceasing to meet the trading requirement merely because of anything done in consequence of the company or any of its subsidiaries being in administration or receivership.

This has effect subject to subsections (2) and (3).

- (2) Subsection (1) applies only if—
- (a) the entry into administration or receivership, and
  - (b) everything done as a result of the company concerned being in administration or receivership,

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is for genuine commercial reasons, and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

- (3) A company ceases to meet the trading requirement if before the time that is relevant for the purposes of section 78(2)—
- (a) a resolution is passed, or an order is made, for the winding up of the company or any of its subsidiaries (or, in the case of a winding up otherwise than under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), any other act is done for the like purpose), or
  - (b) the company or any of its subsidiaries is dissolved without winding up.
- This is subject to subsection (4).
- (4) Subsection (3) does not apply if —
- (a) the winding up is for genuine commercial reasons, and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax, and
  - (b) the company continues, during the winding up, to be a trading company.
- (5) References in this section to a company being “in administration” or “in receivership” are to be read in accordance with section 252 of ITA 2007.

## **81 The control and independence requirement**

- (1) The control element of the requirement is that—
- (a) the company must not control (whether on its own or together with any person connected with it) any company which is not a qualifying subsidiary of the company, and
  - (b) no arrangements must be in existence by virtue of which the company could fail to meet paragraph (a) (whether at a time during the continuous period that is relevant for the purposes of section 78(3) or otherwise).
- (2) The independence element of the requirement is that—
- (a) the company must not—
    - (i) be a 51% subsidiary of another company, or
    - (ii) be under the control of another company (or of another company and any other person connected with that other company), without being a 51% subsidiary of that other company, and
  - (b) no arrangements must be in existence by virtue of which the company could fail to meet paragraph (a) (whether at a time during the continuous period that is relevant for the purposes of section 78(3) or otherwise).
- (3) This section is subject to section 87(3).
- (4) In this section—
- “arrangements” includes any scheme, agreement or understanding (whether or not legally enforceable),
  - “control”, in subsection (1)(a), is to be read in accordance with sections 450 and 451 (but see section 1124 for the meaning of “control” in subsection (2)(a)(ii)), and
  - “qualifying subsidiary” is to be read in accordance with section 191 of ITA 2007.

## **82 The qualifying subsidiaries requirement**

- (1) The qualifying subsidiaries requirement is that any subsidiary that the company has must be a qualifying subsidiary of the company.
- (2) In this section “qualifying subsidiary” is to be read in accordance with section 191 of ITA 2007.

## **83 The property managing subsidiaries requirement**

- (1) The property managing subsidiaries requirement is that any property managing subsidiary that the company has must be a qualifying 90% subsidiary of the company.
- (2) In this section—
  - “property managing subsidiary” has the meaning given by section 188(2) of ITA 2007, and
  - “qualifying 90% subsidiary” has the meaning given by section 190 of that Act.

## **84 The gross assets requirement**

- (1) The gross assets requirement in the case of a single company is that the value of the company’s gross assets—
  - (a) must not exceed £7 million immediately before the shares in respect of which the share loss relief is claimed are issued, and
  - (b) must not exceed £8 million immediately afterwards.
- (2) The gross assets requirement in the case of a parent company is that the value of the group assets—
  - (a) must not exceed £7 million immediately before the shares in respect of which the share loss relief is claimed are issued, and
  - (b) must not exceed £8 million immediately afterwards.
- (3) The value of the group assets means the sum of the values of the gross assets of each of the members of the group, ignoring any that consist in rights against, or shares in or securities of, another member of the group.
- (4) In this section—
  - “group” means a parent company and its qualifying subsidiaries,
  - “parent company” means a company that has one or more qualifying subsidiaries,
  - “qualifying subsidiary” is to be read in accordance with section 191 of ITA 2007, and
  - “single company” means a company that does not have one or more qualifying subsidiaries.

## **85 The unquoted status requirement**

- (1) The unquoted status requirement is that, at the time (“the relevant time”) at which the shares in respect of which the share loss relief is claimed are issued—
  - (a) the company must be an unquoted company,

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- (b) there must be no arrangements in existence for the company to cease to be an unquoted company, and
  - (c) there must be no arrangements in existence for the company to become a subsidiary of another company (“the new company”) by virtue of an exchange of shares, or shares and securities, if—
    - (i) section 87 applies in relation to the exchange, and
    - (ii) arrangements have been made with a view to the new company ceasing to be an unquoted company.
- (2) The arrangements referred to in subsection (1)(b) and (c)(ii) do not include arrangements in consequence of which any shares, stocks, debentures or other securities of the company or the new company are at any subsequent time—
- (a) listed on a stock exchange that is a recognised stock exchange by virtue of an order made under section 1005(1)(b) of ITA 2007, or
  - (b) listed on an exchange, or dealt in by any means, designated by an order made for the purposes of section 184(3)(b) or (c) of that Act,
- if the order was made after the relevant time.
- (3) In this section—
- “arrangements” includes any scheme, agreement or understanding (whether or not legally enforceable),
  - “debenture” has the meaning given by section 738 of the Companies Act 2006, and
  - “unquoted company” has the meaning given by section 184(2) of ITA 2007.

## **86 Power to amend requirements by Treasury order**

The Treasury may by order make such amendments of sections 79 to 85 as they consider appropriate.