



# Corporation Tax Act 2010

## 2010 CHAPTER 4

### PART 4

#### LOSS RELIEF

### CHAPTER 5

#### LOSSES ON DISPOSAL OF SHARES

##### *Shares: subscription and disposal*

#### **73 Subscription for shares**

- (1) This section has effect for the purposes of this Chapter.
- (2) A company subscribes for shares in another company if they are issued to the company by the other company in consideration of money or money's worth.
- (3) If—
  - (a) a company has subscribed for, or is treated under this subsection as having subscribed for, any shares, and
  - (b) any corresponding bonus shares are subsequently issued to the company, the company is treated as having subscribed for the bonus shares.
- (4) If—
  - (a) a company subscribed for any shares (“the original shares”) on a particular date, and
  - (b) any corresponding bonus shares are treated as having been subscribed for by the company under subsection (3),the company is treated as having subscribed for the bonus shares on that date.

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## **74 Disposals of new shares**

- (1) This section applies if—
- (a) a company disposes of shares (“the new shares”), and
  - (b) the new shares are, by virtue of section 127 of TCGA 1992 (reorganisation etc treated as not involving disposal), identified with other shares (“the old shares”) previously held by the company.
- (2) The company is not eligible for share loss relief on the disposal of the new shares unless condition A or B is met.
- This is subject to section 87(3).
- (3) Condition A is that the company would have been eligible for share loss relief on a disposal of the old shares—
- (a) if the company had incurred an allowable loss in disposing of them by way of a bargain made at arm’s length on the occasion of the disposal that would have occurred but for section 127 of TCGA 1992, and
  - (b) where applicable, if this Chapter had then been in force.
- (4) Condition B is that the company gave for the new shares consideration in money or money’s worth other than consideration of the kind mentioned in paragraph (a) or (b) of section 128(2) of TCGA 1992 (“new consideration”).
- (5) If the company relies on condition B, the amount of share loss relief on the disposal of the new shares must not exceed the amount or value of the new consideration taken into account as a deduction in calculating the amount of the loss incurred on the disposal.

## **75 Limits on relief**

- (1) Subsection (2) applies if—
- (a) a company disposes of any shares for which it has subscribed in a qualifying trading company (“qualifying shares”),
  - (b) those shares either—
    - (i) form part of a section 104 holding or a 1982 holding at the time of the disposal, or
    - (ii) formed part of such a holding at an earlier time, and
  - (c) the company makes a claim under section 70 in respect of a loss incurred on the disposal.
- (2) The amount of share loss relief on the disposal is not to exceed the sums that would be allowed as deductions in calculating the amount of the loss if the qualifying shares had not formed part of the holding.
- (3) Subsection (4) applies if—
- (a) a company disposes of any qualifying shares,
  - (b) the qualifying shares, and other shares that are not capable of being qualifying shares, are for the purposes of TCGA 1992 to be treated as acquired by a single transaction by virtue of section 105(1)(a) of that Act (disposal of shares acquired on same day etc), and
  - (c) the company makes a claim under section 70 in respect of a loss incurred on the disposal.

- (4) The amount of share loss relief on the disposal is not to exceed the sums that would be allowed as deductions in calculating the amount of the loss if—
- (a) the qualifying shares were to be treated as acquired by a single transaction, and
  - (b) the other shares were not to be so treated.
- (5) Subsection (6) applies if—
- (a) a company (“the investor”) disposes of any qualifying shares,
  - (b) the qualifying shares (taken as a single asset), and other shares in the same company that are not capable of being qualifying shares (taken as a single asset), are for the purposes of TCGA 1992 to be treated as the same asset by virtue of section 127 of that Act (reorganisation etc treated as not involving disposal), and
  - (c) the investor makes a claim under section 70 in respect of a loss incurred on the disposal.
- References in this subsection and subsection (6) to other shares in the same company include debentures of the same company.
- (6) The amount of share loss relief on the disposal is not to exceed the sums that would be allowed as deductions in calculating the amount of the loss if the qualifying shares and the other shares in the same company were not to be treated as the same asset.
- (7) In this section—
- “section 104 holding” has the meaning given by section 104(3) of TCGA 1992, and
- “1982 holding” has the meaning given by section 109(1) of that Act.
- (8) For the purposes of this section and section 76, shares are not capable of being qualifying shares at any time if—
- (a) the company concerned acquired the shares otherwise than by subscription,
  - (b) condition C in section 78(4) was not met in relation to the issue of the shares, or
  - (c) condition D in section 78(5) would not be met if the shares were disposed of at that time.
- (9) For the purposes of subsection (5), shares are not capable of being qualifying shares at any time if they are shares of a different class from the shares mentioned in paragraph (a) of that subsection.

## **76 Disposal of shares forming part of mixed holding**

- (1) This section applies if a company disposes of shares forming part of a mixed holding of shares, that is, a holding of shares in a company which includes—
- (a) shares that are not capable of being qualifying shares, and
  - (b) other shares.
- (2) Any question—
- (a) whether a disposal by the company of shares forming part of the mixed holding is of qualifying shares, or
  - (b) as to which of any qualifying shares acquired by the company at different times such a disposal relates to,
- is to be determined as provided by the following provisions of this section.

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- (3) Any such question as is mentioned in subsection (2) is to be determined—
- (a) except in a case falling within paragraph (b)—
    - (i) in accordance with subsection (4), and
    - (ii) in the case of shares which under that subsection are identified with the whole or any part of a section 104 holding or a 1982 holding, in accordance with subsection (5),
  - (b) in the case of a mixed holding which includes any shares—
    - (i) to which investment relief is attributable under Schedule 15 to FA 2000 (corporate venturing scheme), and
    - (ii) which have been held continuously (within the meaning of paragraph 97 of that Schedule) from the time they were issued until the disposal, in accordance with subsection (6).
- (4) For the purposes of subsection (3)(a)(i), the question is to be determined by identifying the shares disposed of in accordance with sections 105 and 107 of TCGA 1992.
- (5) For the purposes of subsection (3)(a)(ii), the question is to be determined by treating the disposal and any previous disposal by the company out of the section 104 or 1982 holding as relating to shares acquired later rather than earlier.
- (6) For the purposes of subsection (3)(b), the question is to be determined—
- (a) as provided by paragraph 93 of Schedule 15 to FA 2000 (identification of shares on a disposal of part of a holding where investment relief is attributable to any shares in the holding held continuously by the disposing company), but
  - (b) as if the references in that paragraph to a disposal had the same meaning as in the preceding provisions of this section.
- (7) Any such question as is mentioned in subsection (2) which cannot be determined as provided by subsections (3) to (6) is to be determined on a just and reasonable basis.
- (8) In this section “holding” means any number of shares of the same class held by one company in the same capacity, growing or diminishing as shares of that class are acquired or disposed of.
- For this purpose shares are not to be treated as being of the same class unless they are so treated by the practice of a recognised stock exchange or would be so treated if dealt in on such an exchange.
- (9) In this section “section 104 holding”, “1982 holding” and “qualifying shares” have the same meaning as in section 75.

## 77 **Section 76: supplementary**

- (1) In a case to which section 127 of TCGA 1992 (reorganisation etc treated as not involving disposal) applies (including a case where that section applies by virtue of an enactment relating to chargeable gains), shares included in the new holding are treated for the purposes of section 76 as acquired when the original shares were acquired.
- (2) Any shares held or disposed of by a nominee or bare trustee for a company are treated for the purposes of section 76 as held or disposed of by that company.

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- (3) In this section “new holding” and “original shares” have the same meaning as in section 127 of TCGA 1992 (or, as the case may be, that section as applied by the enactment concerned).