
STATUTORY INSTRUMENTS

1992 No. 58

The Ports Act 1991 (Levy on Disposals of Land, etc.) Order 1992

CHARGEABLE COMPANY'S GROUP

Disposals within wholly-owned group

33. Sections 273 and 273A of the 1970 Act⁽¹⁾ shall apply for the purposes of section 17 of the 1991 Act and this Order as if the reference in subsection (1) of each of those sections to corporation tax on chargeable gains were a reference to levy under the said section 17 and as if the references in those sections to a group were to a wholly-owned group.

Company ceasing to be member of group

34. Where the sale and reacquisition of an asset which are to be treated by virtue of subsection (3) or (3C) of section 278 of the 1970 Act⁽²⁾ (including either of those subsections as it has effect by virtue of section 17(6) of the 1991 Act) as having taken place are a sale and reacquisition of relevant land or a relevant interest in land—

- (a) the sale and reacquisition shall for the purposes of section 17 of the 1991 Act and this Order be treated as having taken place immediately before the company mentioned in the said subsection (3) or (3C) ceased to be a member of the group mentioned in the said section 278, at market value at that time (and not immediately after the acquisition of the asset, at market value at that time) and that time shall accordingly be the disposal date in relation to the disposal constituted by the sale; and
- (b) in the event that the consideration for which that company acquired the land or interest has before the section 278 disposal fallen to be recomputed under article 35, the sum attributable to the land or interest under paragraph (a) of section 32(1) of the 1979 Act, as applied for the purposes of section 17 of the 1991 Act and this Order, shall be that consideration as last previously recomputed.

Decrease in equity holding

35.—(1) Where—

- (a) there has been a disposal within the levy period of relevant land or a relevant interest in land by one member of the chargeable company's group to another member of the group ("the acquiring company");
- (b) at a time when the acquiring company is a member of the group there is a decrease in the percentage of the equity of the acquiring company held, whether directly or indirectly by the principal member of the group (not being a decrease therein such as to give rise to a section 278 disposal); and

⁽¹⁾ 1970 c. 10; section 273 was amended by the Finance Act 1990 (c. 29), section 65(2) and (4); section 273A was inserted by the Finance Act 1990, section 70(1) and (9).

⁽²⁾ Subsection (3C) was inserted by the Finance Act 1989 (c. 26), section 138(5).

- (c) the market value—
 - (i) of that land or interest, or
 - (ii) if before the time of the decrease the acquiring company has made a part disposal of the land or interest, of such part thereof as remains undisposed of;

is at that time greater than—

- (A) in a case where the whole of the land or interest still belongs to the acquiring company, the amount or value of the consideration given by the acquiring company for the acquisition of the land or interest (or, if the consideration has on one or more previous occasions been redetermined by virtue of the provisions of this paragraph, the amount or value of the consideration as last so redetermined); or
- (B) in a case where the acquiring company has made a part disposal of the land or interest, such part of the consideration (as so redetermined, if so redetermined) as is attributable to the part of the land or interest remaining undisposed of;

as increased (in either case) by the percentage of any increase in the retail prices index between that for the month in which the disposal mentioned in sub-paragraph (a) above took place and that for the month immediately preceding the month in which the decrease referred to in sub-paragraph (b) above took place;

the gain accruing or treated as accruing on the said disposal shall be recomputed as if the consideration for it had been—

- (I) increased by an amount equal to the excess of—
 - (IA) if the whole of the land or interest still belongs to the acquiring company, the market value of the land or interest at the time of the said decrease over the consideration for the said disposal (as previously redetermined, if so redetermined, by virtue of the provisions of this paragraph; and as increased in accordance with sub-paragraph (c) above by reference to any increase in the retail prices index); or
 - (IB) if only part of the land or interest still belongs to the acquiring company, the market value of such part thereof as belongs to that company at the time of the said decrease over such part of such consideration (as so redetermined, if so redetermined; and as so increased) as is attributable to the part of the land or interest remaining undisposed of; and
- (II) decreased by an amount calculated in accordance with paragraph (7) below;

and, subject to paragraph (3) below, the amount by which the consideration is increased in accordance with paragraph (I) above is in this article referred to as the “marginal increment”.

- (a) (2) (a) In paragraph (1) above the references to such part of the consideration as is attributable to the part of the land or interest remaining undisposed of are references to the same proportion of the consideration as the proportion of the section 32(1) sums which, by virtue of section 35 (part disposals) of the 1979 Act as it applies for the purposes of section 17 of the 1991 Act and this Order, is to be attributed to the part of the land or interest remaining undisposed of.
- (b) In this paragraph, the “section 32(1) sums” means the sums which, under paragraph (a) or (b) of section 32(1) of the 1979 Act as it applies for the said purposes, are attributable to the land or interest.

(3) Where—

- (a) before a decrease such as is referred to in sub-paragraph (b) of paragraph (1) above there have been one or more other such decreases; and
- (b) the decrease preceding the first-mentioned decrease or, if there have been two or more preceding decreases, the last of those decreases gave rise to a section 278 disposal;

the marginal increment shall be the amount (if any) by which—

- (i) the market value mentioned in sub-paragraph (c) of the said paragraph (1);

exceeds—

- (ii) the market value at the time of the section 278 disposal of the land or interest or (as the case may be) of the part the reofremaining undisposed of.

(4) For the purposes of this article, where such a disposal as is referred to in paragraph (1) (a) above occurs before the beginning of the levy period, it shall for the purposes of this article be deemed to have occurred on the first day of the levy period for a consideration of such amount as would secure that no gain accrues to the person making the disposal (and that day shall accordingly be the disposal date in relation to that disposal).

(5) For the purposes of paragraph (1) above, the percentage of the equity of the acquiring company which is at any time held (directly or indirectly) by the principal company of the group of which chargeable company is a member shall be the percentage which at that time is the lowest of the following—

- (a) the percentage of the ordinary share capital of the acquiring company which is beneficially owned directly or indirectly by the principal company;
- (b) the percentage to which the principal company is beneficially entitled of any profits available for distribution to equity holders of the acquiring company;
- (c) the percentage to which the principal company would be beneficially entitled of any assets of the acquiring company available for distribution to its equity holders on a winding-up;

and—

- (i) in this paragraph “ordinary share capital” has the meaning given to it by subsection (1) of section 832 of the 1988 Act(3);
- (ii) Schedule 18 to that Act(4) shall apply for the purpose of supplementing this paragraph as it applies for the purpose of supplementing section 413 of that Act.

(6) Where, in consequence of a recomputation pursuant to paragraph (1) above, the gain accruing on a disposal is increased, the amount of the levy chargeable on the disposal shall be increased accordingly and a sum equal to the increase over the amount previously paid (as increased, where applicable, in consequence of any earlier recomputation pursuant to paragraph (1)) shall be payable to the appropriate Minister on the quarter date next following the date on which the decrease to which the calculation relates occurred.

(7) The amount referred to in sub-paragraph (II) of paragraph (1) above is equal to the product of P and Q where:

P is the marginal increment; and

Q is a number to be determined in accordance with the following rules—

- (a) where the disposal occurs within the first five years of the levy period and the decrease occurs within the sixth or seventh year of that period, the number shall be 1/5;
- (b) where the disposal occurs within the first five years of the levy period and the decrease occurs within the last three years of that period, the number shall be 3/5;
- (c) where the disposal occurs within the sixth or seventh year of the levy period and the decrease occurs within the last three years of that period, the number shall be ; and
- (d) in any other case, the number shall be 1.

(3) 1988 c. 1.

(4) Schedule 18 was amended by the Finance Act 1989, section 101; and by the Capital Allowances Act 1990 (c. 1), section 164 and Schedule 1, paragraph 8(1) and (40).

(8) If—

- (a) an option to acquire securities of the acquiring company is at any time within the levy period granted by another member of the chargeable company's group; and
- (b) the exercise of the option would result in a decrease such as is mentioned in sub-paragraph (b) of paragraph (1) above;

then the option shall for the purposes of that sub-paragraph be regarded as if it had been exercised at that time, and a decrease such as is mentioned in that sub-paragraph shall accordingly for those purposes be regarded as taking place at that time.

(9) If at any time an option to which paragraph (8) above applies has lapsed (without being exercised) or has become incapable of being exercised, then the amount of the gain regarded as accruing on the disposal referred to in paragraph (1) above shall be recomputed as if the said paragraph (8) had not applied to it, and—

- (a) if that time is within the levy period, details of the recomputation shall be provided to the appropriate Minister together with the disposal statement for the disposal period in which the option lapsed or became incapable of being exercised; or
- (b) if that time is not within the levy period, the chargeable company shall as soon as may be practicable provide details of the recomputation to the appropriate Minister.

(10) Upon receipt of details of the recomputation, the appropriate Minister shall inquire into the matter and, if an excessive payment has been made by the chargeable company, the amount thereof (whether levy or interest on unpaid levy or both) shall be repaid by him; and the time within which he shall do so shall be—

- (a) if the option lapsed or became incapable of being exercised within the levy period, within 20 business days of receipt by him of the disposal statement referred to in sub-paragraph (a) of paragraph (9) above;
- (b) in any other case, within 20 business days of the receipt by him of details of the recomputation or, if he reasonably requests the chargeable company to supply further information for the purpose of his inquiry into the matter pursuant to this paragraph, within 20 such days of receiving such further information.

(11) Where—

- (a) the acquiring company makes a part disposal of the land or interest the subject of the disposal to it referred to in paragraph (1) (a) above; and
- (b) the consideration for the disposal to the acquiring company has been redetermined by virtue of the provisions of paragraph (1) of this article;

the sum which for the purposes of the part disposal is to be attributable to the land or interest under paragraph (a) of section 32(1) of the 1979 Act, as it applies for the purposes of section 17 of the 1991 Act and this Order, shall be the amount or value of the consideration as so redetermined or, as the case may be, as last so redetermined.

(12) In this article—

- (a) “principal member”, in relation to a chargeable company's group, means—
 - (i) that member of which or of an effective subsidiary of which every other member is an effective subsidiary; or
 - (ii) if there is not one such member, those two or more members of which together or of an effective subsidiary of which together every other member is an effective subsidiary;
- (b) a reference to a consideration as redetermined by virtue of the provisions of paragraph (1) above is a reference to that consideration as increased in accordance with sub-paragraph (I) and as decreased in accordance with sub-paragraph (II) of that paragraph.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.
