

## SCHEDULE 16

### GROUP RELIEF

#### PART 3

#### RESTRICTIONS ON AVAILABILITY OF RELIEF

##### *Restrictions on availability of group relief*

- 4 (1) Group relief is not available if, at the effective date of the transaction, there are arrangements in existence by virtue of which—
- (a) a person has or could obtain, at that or some later time, control of the buyer but not of the seller, or
  - (b) any persons together have or could obtain, at that time or some time later, control of the buyer but not of the seller.
- (2) Sub-paragraph (1) does not apply to arrangements entered into with a view to an acquisition of shares by a company (“the acquiring company”)—
- (a) in relation to which section 75 of the [Finance Act 1986 \(c. 41\)](#) (stamp duty: acquisition relief) will apply,
  - (b) in relation to which the conditions for relief under that section will be met, and
  - (c) as a result of which the buyer will be a member of the same group as the acquiring company.
- (3) Group relief is not available if the transaction is effected in pursuance of, or in connection with, arrangements under which—
- (a) the consideration, or any part of the consideration, for the transaction is to be provided or received (directly or indirectly) by a person other than a group company, or
  - (b) the seller and the buyer are to cease to be members of the same group by reason of the buyer ceasing to be a 75% subsidiary of the seller or a third company.
- (4) Arrangements are within sub-paragraph (3)(a) if under them—
- (a) the seller or the buyer, or another group company, is to be enabled to provide any of the consideration, or is to part with any of it, by or in consequence of the carrying out of a transaction or transactions, and
  - (b) the transaction or transactions, or any of them, involve a payment or other disposition by a person other than a group company.
- (5) In sub-paragraphs (3)(a) and (b), a “group company” means a company that at the effective date of the transaction is a member of the same group as the seller or the buyer.
- (6) In this paragraph—
- “arrangements” (“*trefniadau*”) includes any scheme, agreement or understanding, whether or not legally enforceable;
  - “control” (“*rheolaeth*”) has the meaning given by section 1124 of the [Corporation Tax Act 2010 \(c. 4\)](#).

- (7) This paragraph has effect subject to paragraphs 5 and 6 (certain arrangements not within paragraph 4).

*Certain arrangements not within paragraph 4: joint venture companies*

- 5 (1) Arrangements entered into by a joint venture company which, apart from this paragraph, would be arrangements to which paragraph 4 applies are not to be treated as such arrangements if and so long as—
- (a) the arrangements fall within sub-paragraph (2), and
  - (b) none of the contingencies mentioned in sub-paragraph (3) to which the arrangements relate has occurred.
- (2) Arrangements fall within this sub-paragraph if they are—
- (a) an agreement which provides for the transfer of shares or securities in the joint venture company to one or more members of that company on, or as a result of, one or more contingencies mentioned in sub-paragraph (3) occurring, or
  - (b) a provision in a constitutional document of the joint venture company which provides for the suspension of a member's voting rights on, or as a result of, one or more of those contingencies occurring.
- (3) The contingencies referred to in sub-paragraphs (1)(b) and (2) are—
- (a) the voluntary departure of a member,
  - (b) the commencement of the liquidation, administration, administrative receivership or receivership of, or the entering into of a voluntary arrangement by, a member under the [Insolvency Act 1986 \(c. 45\)](#) or the [Insolvency \(Northern Ireland\) Order 1989 \(S.I.1989/2405 \(N.I.19\)\)](#) or the commencement, or entering into, of equivalent proceedings or arrangements under the law of any country or territory outside the United Kingdom,
  - (c) a serious deterioration in the financial condition of a member,
  - (d) a change of control of a member,
  - (e) a default by a member in performing its obligations under any agreement between the members or with the joint venture company (which, for this purpose, includes any constitutional document of the joint venture company),
  - (f) an external change in the commercial circumstances in which the joint venture company operates such that its viability is threatened,
  - (g) an unresolved disagreement between the members, and
  - (h) any contingency of a similar kind to that mentioned in any of paragraphs (a) to (g) which is provided for, but not intended to happen, when the arrangements in question were entered into.
- (4) This paragraph does not apply if a member could, alone or together with connected persons, dictate the terms or timing of—
- (a) the transfer of shares or securities, or
  - (b) the suspension of a member's voting rights,
- in advance of one or more of the contingencies occurring.
- (5) For the purposes of sub-paragraph (4), members are not connected with each other by reason only of their membership of the joint venture company.

(6) In this paragraph—

“constitutional document” (“*dogfen gyfansoddiadol*”) means a memorandum of association, articles of association or any other similar document regulating the affairs of the joint venture company;

“joint venture company” (“*cwmni cyd-fenter*”) means a company which—

- (a) has two or more member companies, and
- (b) carries on a commercial activity governed by an agreement regulating the affairs of its members;

“member” (“*aelod*”) means a holder of shares or securities in the joint venture company.

*Certain mortgage arrangements not within paragraph 4*

6 (1) Arrangements entered into by a company which, apart from this paragraph, would be arrangements to which paragraph 4 applies are not to be treated as such arrangements if and so long as—

- (a) the arrangements are a mortgage, secured by way of shares or securities in the company, which on default or the happening of any other event allows the mortgagee to exercise its rights against the mortgagor, and
- (b) the mortgagee has not exercised its rights against the mortgagor.

(2) This paragraph does not apply if the mortgagee—

- (a) possesses greater rights in respect of the shares or securities which are the subject of the mortgage than it requires to protect its interest as mortgagee, or
- (b) could alone or together with connected persons dictate the terms or timing of the default or the happening of any event which allows it to exercise its rights against the mortgagor.

(3) For the purposes of sub-paragraph (2)(b), a mortgagee is not, by reason only of the mortgage, connected with a company whose shares or securities are the subject of the mortgage.

(4) In this paragraph, “mortgage” means—

- (a) in England and Wales, and Northern Ireland, any legal or equitable charge, and
- (b) in Scotland, any right in security.