

SCHEDULE 17

(as introduced by section 30(1))

RECONSTRUCTION AND ACQUISITION RELIEFS

PART 1

INTRODUCTORY

Overview

- 1 (1) This Schedule makes provision about reconstruction relief and acquisition relief.
- (2) This Schedule is arranged as follows—
 - (a) Part 2 describes the relief available for transactions entered into in pursuance of a scheme of reconstruction,
 - (b) Part 3 provides for the amount of tax chargeable where a land transaction is entered into in connection with a company acquiring the whole or part of the undertaking of another company,
 - (c) Part 4 makes provision about the withdrawal of reconstruction relief or acquisition relief, and
 - (d) Part 5 makes provision about recovery of unpaid tax from certain persons.

PART 2

RECONSTRUCTION RELIEF

Reconstruction relief

- 2 (1) Where—
 - (a) a company (“the acquiring company”) acquires the whole or part of the undertaking of another company (“the target company”) in pursuance of a scheme for the reconstruction of the target company, and
 - (b) the first and second conditions specified below are met,a land transaction entered into for the purposes of or in connection with the transfer of the undertaking or part is relieved from tax.
- (2) Relief under this paragraph is referred to in this Schedule as “reconstruction relief”.
- (3) The first condition is that the consideration for the acquisition consists wholly or partly of the issue of non-redeemable shares in the acquiring company to all the shareholders of the target company.
- (4) Where the consideration for the acquisition consists partly of the issue of non-redeemable shares, that condition is met only if the rest of the consideration consists wholly of the assumption or discharge by the acquiring company of liabilities of the target company.
- (5) In sub-paragraphs (3) and (4), “non-redeemable shares” means shares that are not redeemable shares.
- (6) The second condition is that after the acquisition has been made—

- (a) each shareholder of each of the companies is a shareholder of the other, and
 - (b) the proportion of shares of one of the companies held by any shareholder is the same, or as nearly as may be the same, as the proportion of shares of the other company held by that shareholder.
- (7) If immediately before the acquisition the target company or the acquiring company holds any of its own shares, the shares are to be treated for the purposes of sub-paragraphs (3) and (6) as having been cancelled before the acquisition (and, accordingly, the company is to be treated as if it were not a shareholder of itself).
- (8) This paragraph is subject to paragraph 5 (withdrawal of reconstruction or acquisition relief).

PART 3

ACQUISITION RELIEF

Acquisition relief

- 3 (1) Where—
- (a) a company (“the acquiring company”) acquires the whole or part of the undertaking of another company (“the target company”), and
 - (b) all the conditions specified below are met,
- the amount of tax chargeable on a land transaction entered into for the purposes of or in connection with the transfer of the undertaking or part is limited to 0.5% of the chargeable consideration for the transaction (or such other proportion of that consideration as the Welsh Ministers may specify by regulations under this paragraph).
- (2) Relief under this paragraph is referred to in this Schedule as “acquisition relief”.
- (3) The first condition is that the consideration for the acquisition consists wholly or partly of the issue of non-redeemable shares in the acquiring company to—
- (a) the target company, or
 - (b) all or any of the target company’s shareholders.
- (4) Where the consideration for the acquisition consists partly of the issue of non-redeemable shares, that condition is met only if the rest of the consideration consists wholly of—
- (a) cash not exceeding 10% of the nominal value of the non-redeemable shares so issued,
 - (b) the assumption or discharge by the acquiring company of liabilities of the target company, or
 - (c) both of those things.
- (5) In sub-paragraphs (3) and (4), “non-redeemable shares” means shares that are not redeemable shares.
- (6) The second condition is that the acquiring company is not associated with another company that is a party to arrangements with the target company relating to shares of the acquiring company issued in connection with the transfer of the undertaking or part.

- (7) For this purpose, companies are associated if one has control of the other or both are controlled by the same person or persons; and the reference to control is to be construed in accordance with sections 450 and 451 of the [Corporation Tax Act 2010](#) (c. 4).
- (8) The third condition is that the undertaking or part acquired by the acquiring company has as its main activity the carrying on of a trade that does not consist wholly or mainly of dealing in chargeable interests.
- (9) In sub-paragraph (8), “trade” has the same meaning as in section 1119 of the [Corporation Tax Act 2010](#) (c. 4).
- (10) In this paragraph, “arrangements” include any scheme, agreement or understanding, whether or not legally enforceable.
- (11) This paragraph is subject to paragraph 5 (withdrawal of reconstruction or acquisition relief).

PART 4

WITHDRAWAL OF RECONSTRUCTION OR ACQUISITION RELIEF

Interpretation

- 4 In this Part and in Part 5 of this Schedule, a transaction—
- (a) that is relieved from tax by virtue of reconstruction relief, or
 - (b) on which tax is chargeable in accordance with paragraph 3 (acquisition relief),
- is referred to as a “relieved transaction”.

Withdrawal of reconstruction or acquisition relief

- 5 (1) Where sub-paragraph (2) applies, reconstruction or acquisition relief in relation to a relieved transaction, or an appropriate proportion of it, is withdrawn and tax is chargeable in accordance with this paragraph.
- (2) This sub-paragraph applies where—
- (a) control of the acquiring company changes—
 - (i) before the end of the period of 3 years beginning with the effective date of the transaction, or
 - (ii) in pursuance of, or in connection with, arrangements made before the end of that period, and
 - (b) at the time control of the acquiring company changes (“the relevant time”), it or a relevant associated company holds a chargeable interest—
 - (i) that was acquired by the acquiring company under the relieved transaction, or
 - (ii) that is derived from an interest so acquired,
- and that has not subsequently been acquired at market value under a chargeable transaction in relation to which reconstruction or acquisition relief was available but was not claimed.

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- (3) The amount chargeable is the tax that would have been chargeable in respect of the relieved transaction but for reconstruction or acquisition relief if the chargeable consideration for that transaction had been an amount equal to—
 - (a) the market value of the subject-matter of the transaction, and
 - (b) if the acquisition was the grant of a lease at a rent, that rent,
 or, as the case may be, an appropriate proportion of the tax that would have been so chargeable.
- (4) In sub-paragraphs (1) and (3), “an appropriate proportion” means an appropriate proportion having regard to the subject-matter of the relieved transaction and what is held at the relevant time by the acquiring company or, as the case may be, by that company and any relevant associated companies.
- (5) In this paragraph, “relevant associated company”, in relation to the acquiring company, means a company—
 - (a) that is controlled by the acquiring company immediately before the control of that company changes, and
 - (b) of which control changes in consequence of the change of control of that company.
- (6) In this paragraph—
 - (a) “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable;
 - (b) “control” is to be construed in accordance with sections 450 and 451 of the [Corporation Tax Act 2010 \(c. 4\)](#);
 - (c) references to control of a company changing are to the company becoming controlled—
 - (i) by a different person,
 - (ii) by a different number of persons, or
 - (iii) by two or more persons at least one of whom is not the person, or one of the persons, by whom the company was previously controlled.
- (7) This paragraph has effect subject to paragraph 6 (cases in which reconstruction or acquisition relief not withdrawn).

Cases in which reconstruction or acquisition relief not withdrawn

- 6 (1) Reconstruction or acquisition relief is not withdrawn under paragraph 5 in the following cases.
- (2) The first case is where control of the acquiring company changes as a result of a share transaction that is effected as mentioned in—
 - (a) any of paragraphs (a) to (d) of paragraph 3 of Schedule 3 (transactions in connection with divorce etc.), or
 - (b) any of paragraphs (a) to (d) of paragraph 4 of that Schedule (transactions in connection with dissolution of civil partnership etc.).
- (3) The second case is where control of the acquiring company changes as a result of a share transaction that—
 - (a) is effected as mentioned in sub-paragraph (1) of paragraph 6 of Schedule 3 (variation of testamentary dispositions etc.), and
 - (b) meets the conditions in sub-paragraph (2) of that paragraph.

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- (4) The third case is where control of the acquiring company changes as a result of an exempt intra-group transfer.
- (5) An “exempt intra-group transfer” means a transfer of shares effected by an instrument that is exempt from stamp duty by virtue of section 42 of the [Finance Act 1930 \(c. 28\)](#) or section 11 of the [Finance Act \(Northern Ireland\) 1954 \(c. 23 \(N.I.\)\)](#) (transfers between associated bodies corporate).
- (6) But see paragraph 7 (withdrawal of relief in case of subsequent non-exempt transfer).
- (7) The fourth case is where control of the acquiring company changes as a result of a transfer of shares to another company in relation to which share acquisition relief applies.
- (8) “Share acquisition relief” means relief under section 77 of the [Finance Act 1986 \(c. 41\)](#) and a transfer is one in relation to which that relief applies if an instrument effecting the transfer is exempt from stamp duty by virtue of that provision.
- (9) But see paragraph 7 (withdrawal of relief in case of subsequent non-exempt transfer).
- (10) The fifth case is where—
 - (a) control of the acquiring company changes as a result of a loan creditor becoming, or ceasing to be, treated as having control of the company, and
 - (b) the other persons who were previously treated as controlling the company continue to be so treated.
- (11) “Loan creditor” here has the meaning given by section 453 of the [Corporation Tax Act 2010 \(c. 4\)](#).

Withdrawal of reconstruction or acquisition relief on subsequent non-exempt transfer

- 7 (1) Reconstruction or acquisition relief in relation to a relieved transaction, or an appropriate proportion of it, is withdrawn and tax is chargeable in accordance with this paragraph in the following cases.
- (2) The first case is where paragraph 6(4) (change of control of acquiring company as a result of exempt intra-group transfer) has effect to prevent the withdrawal of reconstruction or acquisition relief on a change of control of the acquiring company, but—
- (a) a company holding shares in the acquiring company to which the exempt intra-group transfer related, or that are derived from shares to which that transfer related, ceases to be a member of the same group as the target company—
 - (i) before the end of the period of 3 years beginning with the effective date of the relieved transaction, or
 - (ii) in pursuance of or in connection with arrangements made before the end of that period, and
 - (b) the acquiring company or a relevant associated company, at that time (“the relevant time”), holds a chargeable interest—
 - (i) that was transferred to the acquiring company by the relieved transaction, or
 - (ii) that is derived from an interest that was so transferred,

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and that has not subsequently been transferred at market value by a chargeable transaction in relation to which reconstruction or acquisition relief was available but was not claimed.

- (3) The second case is where paragraph 6(7) (change of control of acquiring company as a result of a transfer to which share acquisition relief applies) has effect to prevent the withdrawal of reconstruction or acquisition relief on a change of control of the acquiring company, but—

- (a) control of the other company mentioned in that provision changes—
 - (i) before the end of the period of 3 years beginning with the effective date of the relieved transaction, or
 - (ii) in pursuance of or in connection with arrangements made before the end of that period,

at a time when that company holds any shares transferred to it by the exempt transfer, or any shares derived from shares so transferred, and

- (b) the acquiring company or a relevant associated company, at that time (“the relevant time”), holds a chargeable interest—
 - (i) that was transferred to the acquiring company by the relieved transaction, or
 - (ii) that is derived from an interest that was so transferred,

and that has not subsequently been transferred at market value by a chargeable transaction in relation to which reconstruction or acquisition relief was available but was not claimed.

- (4) The amount chargeable is the tax that would have been chargeable in respect of the relieved transaction but for reconstruction or acquisition relief if the chargeable consideration for that transaction had been an amount equal to the market value of the subject-matter of the transaction or, as the case may be, an appropriate proportion of the tax that would have been so chargeable.

- (5) In sub-paragraphs (1) and (4), “an appropriate proportion” means an appropriate proportion having regard to the subject-matter of the relieved transaction and what is held at the relevant time by the acquiring company or, as the case may be, by that company and any relevant associated companies.

- (6) In this paragraph, “relevant associated company”, in relation to the acquiring company, means a company—

- (a) that is controlled by the acquiring company immediately before the control of that company changes, and
- (b) of which control changes in consequence of the change of control of that company.

- (7) In this paragraph—

- (a) “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable;
- (b) “control” is to be construed in accordance with sections 450 and 451 of the [Corporation Tax Act 2010 \(c. 4\)](#);
- (c) references to control of a company changing are to the company becoming controlled—
 - (i) by a different person,
 - (ii) by a different number of persons, or

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- (iii) by two or more persons at least one of whom is not the person, or one of the persons, by whom the company was previously controlled.

PART 5

RECOVERY OF RECONSTRUCTION OR ACQUISITION RELIEF

Recovery of reconstruction or acquisition relief from another group company or controlling director

- 8 (1) This paragraph applies where—
- (a) tax is chargeable under paragraph 5 or 7 (withdrawal of reconstruction or acquisition relief),
 - (b) the amount so chargeable has been finally determined, and
 - (c) the whole or part of the amount so chargeable is unpaid 6 months after the date on which it became payable.
- (2) The following persons may, by notice under paragraph 9, be required to pay the unpaid tax (together with any interest payable)—
- (a) any company that at any relevant time was a member of the same group as the acquiring company and was above it in the group structure;
 - (b) any person who at any relevant time was a controlling director of the acquiring company or a company having control of the acquiring company.
- (3) For the purposes of sub-paragraph (2), “relevant time” means any time between effective date of the relieved transaction and the change of control by virtue of which tax is chargeable.
- (4) For the purposes of sub-paragraph (2)(a), a company (“company A”) is “above” another company (“company B”) in a group structure if company B, or another company that is above company B in the group structure, is a 75% subsidiary of company A.
- (5) For the purposes of sub-paragraph (2)(b)—
- (a) “director”, in relation to a company, has the meaning given by section 67(1) of the [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#) (read with subsection (2) of that section) and includes any person falling within section 452(1) of the [Corporation Tax Act 2010 \(c. 4\)](#);
 - (b) “controlling director”, in relation to a company, means a director of the company who has control of it; and “control” here is to be construed in accordance with sections 450 and 451 of the [Corporation Tax Act 2010 \(c. 4\)](#).
- (6) For the purposes of this paragraph, a claim is not finally determined until—
- (a) the claim, or
 - (b) the amount to which it relates,
- can no longer be varied (whether on review, appeal or otherwise).

Recovery of reconstruction or acquisition relief: supplementary

- 9 (1) WRA may issue a notice to a person within paragraph 8(2) requiring the person to pay the amount that remains unpaid before the end of the period of 30 days beginning with the day on which the notice is issued.

- (2) A notice under sub-paragraph (1) must be issued before the end of the period of 3 years beginning with the date of the final determination mentioned in paragraph 8(1)(b).
- (3) The notice must state the amount required to be paid by the person to whom the notice is issued.
- (4) That amount is a “relevant amount” payable by the person to whom the notice is issued for the purposes of Part 7 of TCMA (payment and enforcement).
- (5) A person who has paid an amount in pursuance of a notice under this paragraph may recover that amount from the acquiring company.