

SCHEDULE 10 GROUP RELIEF

PART 3

WITHDRAWAL OF RELIEF

Overview

- 12 This Part of this schedule is arranged as follows—
- paragraphs 13 to 19 provide for circumstances where relief under this schedule is withdrawn,
 - paragraphs 20 to 31 provide for circumstances in which, despite paragraphs 13 to 19, relief is not withdrawn, and
 - paragraphs 32 to 40 provide for the application of paragraphs 13 to 31 where there are successive transactions.

Withdrawal of relief

- 13 Relief under this schedule is withdrawn or partially withdrawn where paragraphs 14 and 15 apply.
- 14 This paragraph applies where the buyer in the transaction which is exempt from charge by virtue of this schedule (“the relevant transaction”) ceases to be a member of the same group as the seller—
- (a) before the end of the period of 3 years beginning with the effective date of the transaction, or
 - (b) in pursuance of, or in connection with, arrangements made before the end of that period.
- 15 This paragraph applies where, at the time the buyer ceases to be a member of the same group as the seller (“the relevant time”), it or a relevant associated company holds a chargeable interest—
- (a) that was acquired by the buyer under the relevant transaction, or
 - (b) that is derived from a chargeable interest so acquired,
- and that has not subsequently been acquired at market value under a chargeable transaction for which relief under this schedule was available but not claimed.

Amount of tax chargeable where relief withdrawn

- 16 Where relief is withdrawn, the amount of tax chargeable is determined in accordance with paragraph 17.
- 17 The amount chargeable is the tax that would have been chargeable in respect of the relevant transaction but for the 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, or
 - (b) if the acquisition was the grant of a lease, the rent.

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Amount of tax chargeable where relief partially withdrawn

- 18 Where relief is partially withdrawn, the amount of tax chargeable is an appropriate proportion of the amount determined in accordance with paragraph 17.
- 19 An “appropriate proportion” means an appropriate proportion having regard to—
- (a) the subject-matter of the relevant transaction, and
 - (b) what is held at the relevant time by the buyer or, as the case may be, by the buyer and its relevant associated companies.

Case where relief not withdrawn: winding up

- 20 Relief under this schedule is not withdrawn where the buyer ceases to be a member of the same group as the seller by reason of anything done for the purposes of, or in the course of, winding up the seller or another company that is above the seller in the group structure.

Cases where relief not withdrawn: stamp duty reliefs

- 21 Relief under this schedule is not withdrawn where—
- (a) the buyer ceases to be a member of the same group as the seller as a result of an acquisition of shares by another company (“the acquiring company”) in relation to which—
 - (i) section 75 of the Finance Act 1986 (c.41) (stamp duty: acquisition relief) applies, and
 - (ii) the conditions for relief under that section are met, and
 - (b) the buyer is immediately after that acquisition a member of the same group as the acquiring company.
- 22 Relief under this schedule is not withdrawn where—
- (a) the buyer ceases to be a member of the same group as the seller as a result of the transfer of the whole or part of the seller’s business to another company (“the acquiring company”) in relation to which—
 - (i) section 96 of the Finance Act 1997 (c.16) (stamp duty relief: demutualisation of insurance companies) applies, and
 - (ii) the conditions for relief under that section are met, and
 - (b) the buyer is immediately after that transfer a member of the same group as the acquiring company.
- 23 But where, in a case to which paragraph 21 or 22 applies—
- (a) the buyer ceases to be a member of the same group as the acquiring company in the circumstances mentioned in paragraph 24, and
 - (b) at the time the buyer ceases to be a member of the same group as the acquiring company, it or a relevant associated company holds a chargeable interest to which paragraph 25 applies,
- this schedule applies as if the buyer had then ceased to be a member of the same group as the seller.
- 24 The circumstances referred to in paragraph 23(a) are that the buyer ceases to be a member of the same group as the acquiring company—
- (a) before the end of the period of 3 years beginning with the effective date of the transaction which is exempt from charge by virtue of this schedule (“the relevant transaction”), or

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(b) in pursuance of, or in connection with, arrangements made before the end of that period.

25 This paragraph applies to a chargeable interest—

(a) that was acquired by the buyer under the relevant transaction, or

(b) that is derived from a chargeable interest so acquired,

and that has not subsequently been acquired at market value under a chargeable transaction for which relief under this schedule was available but not claimed.

Case where relief not withdrawn: seller leaves group

26 Relief under this schedule is not withdrawn where the buyer ceases to be a member of the same group as the seller because the seller leaves the group.

27 The seller is regarded as leaving the group if the companies cease to be members of the same group by reason of a transaction relating to shares in—

(a) the seller, or

(b) another company that is above the seller in the group structure and as a result of the transaction ceases to be a member of the same group as the buyer.

28 But if there is a change in the control of the buyer after the seller leaves the group, paragraphs 13 to 19 and 22 to 25 have effect as if the buyer had then ceased to be a member of the same group as the seller.

29 Paragraph 28 does not apply where—

(a) there is a change in the control of the buyer because a loan creditor (within the meaning given by section 453 of the Corporation Tax Act 2010 (c.4)) obtains control of, or ceases to control, the buyer, and

(b) the other persons who controlled the buyer before the change continue to do so.

30 There is a change in the control of the buyer if—

(a) a person who controls the buyer (alone or with others) ceases to do so,

(b) a person obtains control of the buyer (alone or with others), or

(c) the buyer is wound up.

31 For the purposes of paragraph 30 a person does not control, or obtain control of, the buyer if that person is under the control of another person or other persons.

Withdrawal of relief in certain cases involving successive transactions

32 Where the following conditions are met, paragraphs 13 to 31 have effect in relation to the relevant transaction as if the seller in relation to the earliest previous transaction falling within paragraph 37 were the seller in relation to the relevant transaction.

33 The first condition is that there is a change in control of the buyer.

34 The second condition is that the change occurs—

(a) before the end of the period of 3 years beginning with the effective date of the transaction which is exempt from charge by virtue of this schedule (“the relevant transaction”), or

(b) in pursuance of, or in connection with, arrangements made before the end of that period.

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- 35 The third condition is that, apart from paragraph 32, relief under this schedule in relation to the relevant transaction would not be withdrawn under paragraph 13.
- 36 The fourth condition is that any previous transaction falls within paragraph 37.
- 37 A previous transaction falls within this paragraph if—
- (a) the previous transaction is exempt from charge by virtue of this schedule or schedule 11 (reconstruction relief and acquisition relief),
 - (b) the effective date of the previous transaction is less than 3 years before the date of the change mentioned in the first condition,
 - (c) the chargeable interest acquired under the relevant transaction by the buyer in relation to that transaction is the same as, comprises, forms part of, or is derived from, the chargeable interest acquired under the previous transaction by the buyer in relation to the previous transaction, and
 - (d) since the previous transaction, the chargeable interest acquired under that transaction has not been acquired by any person under a transaction that is not exempt from charge by virtue of this schedule or schedule 11 (reconstruction relief and acquisition relief).
- 38 Paragraph 33 does not apply where—
- (a) there is a change in the control of the buyer because a loan creditor (within the meaning given by section 453 of the Corporation Tax Act 2010 (c.4)) obtains control of, or ceases to control, the buyer, and
 - (b) the other persons who controlled the buyer before the change continue to do so.
- 39 If two or more transactions effected at the same time are the earliest previous transactions falling within paragraph 37, the reference in paragraph 32 to the seller in relation to the earliest previous transaction is a reference to the persons who are the sellers in relation to the earliest previous transactions.
- 40 There is a change in the control of a company if—
- (a) a person who controls the company (alone or with others) ceases to do so,
 - (b) a person obtains control of the company (alone or with others), or
 - (c) the company is wound up.

Interpretation

- 41 For the purposes of paragraphs 20 and 27 a company is “above” the seller in the group structure if the seller, or another company that is above the seller in the group structure, is a 75% subsidiary of the company.
- 42 In this Part of this schedule—
- “control” is to be interpreted in accordance with sections 450 and 451 of the Corporation Tax Act 2010 (c.4) (but see paragraph 31),
- “relevant associated company”, in relation to the buyer, means a company that—
- (a) is a member of the same group as the buyer immediately before the buyer ceases to be a member of the same group as the seller, and
 - (b) ceases to be a member of the same group as the seller in consequence of the buyer so ceasing.