Taxation of Chargeable Gains Act 1992

1992 CHAPTER 12

PART VI

COMPANIES, OIL, INSURANCE ETC.

CHAPTER I

COMPANIES

Groups of companies

170 Interpretation of sections 171 to 181.

(1) This section has effect for the interpretation of sections 171 to 181 except in so far as the context otherwise requires, and in those sections—

(a) "profits" means income and chargeable gains, and

(b) "trade" includes "vocation", and includes also an office or employment.

Until 6th April 1993 paragraph (b) shall have effect with the addition at the end of the words "or the occupation of woodlands in any context in which the expression is applied to that in the Income Tax Acts".

(2) Except as otherwise provided—

F1(a) . . . . . .

(b) subsections (3) to (6) below apply to determine whether companies form a group and, where they do, which is the principal company of the group;

(c) in applying the definition of "75 per cent. subsidiary" in section 838 of the Taxes Act any share capital of a registered industrial and provident society shall be treated as ordinary share capital; and

(d) "group" and "subsidiary" shall be construed with any necessary modifications where applied to a company incorporated under the law of a country outside the United Kingdom.

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(3) Subject to subsections (4) to (6) below—

(a) a company (referred to below and in sections 171 to 181 as the "principal company of the group") and all its 75 per cent. subsidiaries form a group and, if any of those subsidiaries have 75 per cent. subsidiaries, the group includes them and their 75 per cent. subsidiaries, and so on, but

(b) a group does not include any company (other than the principal company of the group) that is not an effective 51 per cent. subsidiary of the principal company of the group.

(4) A company cannot be the principal company of a group if it is itself a 75 per cent. subsidiary of another company.

(5) Where a company ("the subsidiary") is a 75 per cent. subsidiary of another company but those companies are prevented from being members of the same group by subsection (3)(b) above, the subsidiary may, where the requirements of subsection (3) above are satisfied, itself be the principal company of another group notwithstanding subsection (4) above unless this subsection enables a further company to be the principal company of a group of which the subsidiary would be a member.

(6) A company cannot be a member of more than one group; but where, apart from this subsection, a company would be a member of 2 or more groups (the principal company of each group being referred to below as the "head of a group"), it is a member only of that group, if any, of which it would be a member under one of the following tests (applying earlier tests in preference to later tests)—

(a) it is a member of the group it would be a member of if, in applying subsection (3)(b) above, there were left out of account any amount to which a head of a group is or would be beneficially entitled of any profits available for distribution to equity holders of a head of another group or of any assets of a head of another group available for distribution to its equity holders on a winding-up,

(b) it is a member of the group the head of which is beneficially entitled to a percentage of profits available for distribution to equity holders of the company that is greater than the percentage of those profits to which any other head of a group is so entitled,

(c) it is a member of the group the head of which would be beneficially entitled to a percentage of any assets of the company available for distribution to its equity holders on a winding-up that is greater than the percentage of those assets to which any other head of a group would be so entitled,

(d) it is a member of the group the head of which owns directly or indirectly a percentage of the company's ordinary share capital that is greater than the percentage of that capital owned directly or indirectly by any other head of a group (interpreting this paragraph as if it were included in section 838(1)(a) of the Taxes Act).

(7) For the purposes of this section and sections 171 to 181, a company ("the subsidiary") is an effective 51 per cent. subsidiary of another company ("the parent") at any time if and only if—

(a) the parent is beneficially entitled to more than 50 per cent. of any profits available for distribution to equity holders of the subsidiary; and

(b) the parent would be beneficially entitled to more than 50 per cent. of any assets of the subsidiary available for distribution to its equity holders on a winding-up.

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(8) Schedule 18 to the Taxes Act (group relief: equity holders and profits or assets available for distribution) shall apply for the purposes of subsections (6) and (7) above as if the references to subsection (7) [F2]... of section 413 of that Act were references to subsections (6) and (7) above and as if, in paragraph 1(4), the words from "but" to the end and paragraphs 5(3) **[**[F3]and 5B to 5E**]** and 7(1)(b) were omitted.

(9) For the purposes of this section and sections 171 to 181, references to a company apply only to—

(a) a company within the meaning of the [M1]Companies Act 1985 or the corresponding enactment in Northern Ireland, and

(b) a company **[**[F4](other than a limited liability partnership)**]** which is constituted under any other Act or a Royal Charter or letters patent or [F5]... is formed under the law of a country or territory outside the United Kingdom, and

(c) a registered industrial and provident society within the meaning of section 486 of the Taxes Act; and

[[F6](cc) an incorporated friendly society within the meaning of the Friendly Societies Act 1992; and**]**

(d) a building society.

(10) For the purposes of this section and sections 171 to 181, a group remains the same group so long as the same company remains the principal company of the group, and if at any time the principal company of a group becomes a member of another group, the first group and the other group shall be regarded as the same, and the question whether or not a company has ceased to be a member of a group shall be determined accordingly.

[[F7](10A) Where the principal company of a group (Group 1)—

(a) becomes an SE by reason of being the acquiring company in the formation of an SE by merger by acquisition (in accordance with Articles 2(1), 17(2)(a) and 29(1) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea)),

(b) becomes a subsidiary of a holding SE (formed in accordance with Article 2(2) of that Regulation), or

(c) is transformed into an SE (in accordance with Article 2(4) of that Regulation),

Group 1 and any group of which the SE is a member on formation shall be regarded as the same; and the question whether or not a company has ceased to be a member of a group shall be determined accordingly.**]**

(11) For the purposes of this section and sections 171 to 181, the passing of a resolution or the making of an order, or any other act, for the winding-up of a member of a group of companies shall not be regarded as the occasion of that or any other company ceasing to be a member of the group.

(12) Sections 171 to 181, except in so far as they relate to recovery of tax, shall also have effect in relation to bodies from time to time established by or under any enactment for the carrying on of any industry or part of an industry, or of any undertaking, under national ownership or control as if they were companies within the meaning of those sections, and as if any such bodies charged with related functions (and in particular the Boards and Holding Company established under the [M2]Transport Act 1962 and the new authorities within the meaning of the [M3]Transport Act 1968 established under that Act of 1968) and subsidiaries of any of them formed a group, and as if also any 2 or

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more such bodies charged at different times with the same or related functions were members of a group.

(13) Subsection (12) shall have effect subject to any enactment by virtue of which property, rights, liabilities or activities of one such body fall to be treated for corporation tax as those of another, including in particular any such enactment in Chapter VI of Part XII of the Taxes Act.

(14) Sections 171 to 181, except in so far as they relate to recovery of tax, shall also have effect in relation to the Executive for a designated area within the meaning of section 9(1) of the [M4]Transport Act 1968 as if that Executive were a company within the meaning of those sections.

Textual Amendments

F1 S. 170(2)(a) repealed (with effect in accordance with Sch. 29 para. 1(2), Sch. 40 Pt. II(12) Note 4 of the amending Act) by Finance Act 2000 (c. 17), Sch. 29 para. 1(1)(a), **Sch. 40 Pt. II(12)** (with Sch. 29 para. 46(5))

F2 Words in s. 170(8) repealed (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 40 Pt. II(11)**

F3 Words in s. 170(8) inserted (*retrosp.*) by 1992 c. 48, s. 24, Sch. 6 paras. 5, **10**

F4 Words in s. 170(9)(b) inserted (6.4.2001) by Finance Act 2001 (c. 9), **s. 75(4)**(6) (with Sch. 3)

F5 Words in s. 170(9)(b) repealed (with effect in accordance with Sch. 29 para. 1(2), Sch. 40 Pt. II(12) Note 4 of the amending Act) by Finance Act 2000 (c. 17), Sch. 29 para. 1(1)(b), **Sch. 40 Pt. II(12)** (with Sch. 29 para. 46(5))

F6 S. 170(9)(cc) inserted (with application in accordance with s. 136(4) of the amending Act) by Finance Act 1998 (c. 36), **s. 136(1)**

F7 S. 170(10A) inserted (with effect in accordance with s. 62(2) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **s. 62(1)**

Modifications etc. (not altering text)

C1 S. 170 extended (3.5.1994) by Finance Act 1994 (c. 9), **s. 148(9)**

C2 S. 170 applied (23.3.1995) by The Exchange Gains and Losses (Deferral of Gains and Losses) Regulations 1994 (S.I. 1994/3228), regs. 1(2), **4(1)**

C3 S. 170 applied (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 9 para. 11(5)**

C4 S. 170 applied (with effect in accordance with s. 81(12) of the amending Act) by Finance Act 1999 (c. 16), **s. 81(7)**

C5 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

C6 Ss. 170-181 restricted (12.1.2000) by Greater London Authority Act 1999 (c. 29), **ss. 419(3)**, 425(2); S.I. 1999/3434, art. 2

C7 S. 170 applied (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 26 para. 28(6)**

C8 S. 170 applied (with modifications) (1.8.2004) by Finance Act 2004 (c. 12), **ss. 307(4)**, 319(2) (with s. 314)

C9 Ss. 170-181 modified (5.10.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 9 para. 35(a)** (with s. 38(2)); S.I. 2004/2575, art. 2(1), Sch. 1

C10 S. 170 modified (6.4.2006) by The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), regs. 1, **37(1)**

C11 S. 170 applied (with modifications) (E.W.S.) (1.5.2007) by The National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2007 (S.I. 2007/785), regs. 1, **6(4)**

C12 S. 170(3)-(6) applied (with effect in accordance with s. 51(6) of the amending Act) by Finance Act 2004 (c. 12), **s. 51(3)**

C13 S. 170(7)(8) applied (with modifications) (3.1.1995) by The Ports (Northern Ireland) Order 1994 (S.I. 1994/2809 (N.I. 16)), arts. 1(2), **19(12)**

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C14 S. 170(7) modified by 1988 c. 1, s. 209(8E) (as inserted (with effect in accordance with s. 87(7)(8) of the amending Act) by Finance Act 1995 (c. 4), **s. 87(3)**)
C15 S. 170(12)-(14) applied (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 29 para. 54(2)**

Marginal Citations
M1 1985 c. 6.
M2 1962 c. 46.
M3 1968 c. 73.
M4 1968 c. 73.

Transactions within groups

171 Transfers within a group: general provisions.

[F8(1) Where—

(a) a company ("company A") disposes of an asset to another company ("company B") at a time when both companies are members of the same group, and

(b) the conditions in subsection (1A) below are met,

company A and company B are treated for the purposes of corporation tax on chargeable gains as if the asset were acquired by company B for a consideration of such amount as would secure that neither a gain nor a loss would accrue to company A on the disposal.

(1A) The conditions referred to in subsection (1)(b) above are—

(a) that company A is resident in the United Kingdom at the time of the disposal, or the asset is a chargeable asset in relation to that company immediately before that time, and

(b) that company B is resident in the United Kingdom at the time of the disposal, or the asset is a chargeable asset in relation to that company immediately after that time.

For this purpose an asset is a "chargeable asset" in relation to a company at any time if, were the asset to be disposed of by the company at that time, any gain accruing to the company would be a chargeable gain and would by virtue of section **[**F9 10B**]** form part of its chargeable profits for corporation tax purposes.**]**

(2) Subsection (1) above shall not apply where the disposal is—

(a) a disposal of a debt due from **[**F10 company B**]** effected by satisfying the debt or part of it; or

(b) a disposal of redeemable shares in a company on the occasion of their redemption; or

(c) a disposal by or to an investment trust; or

[F11(cc) a disposal by or to a venture capital trust; or**]**

[F12(cd) a disposal by or to a qualifying friendly society; or**]**

(d) a disposal to a dual resident investing company; F13... **[**F14; or

(da) a disposal by or to a company to which Part 4 of the Finance Act 2006 applies (Real Estate Investment Trusts);**][**F15 or

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(db) a disposal by company A in fulfilment of its obligations under an option granted to company B at a time when those companies were not members of the same group;**]**

F13(e) . . . . . .

and the reference in subsection (1) above to **[**F16company A**]** disposing of an asset shall not apply to anything which under section 122 is to be treated as a disposal of an interest in shares in a company in consideration for a capital distribution (as defined in that section) from that company, whether or not involving a reduction of capital.

(3) Subsection (1) above shall not apply to a transaction treated **[**F17by section 127 as it applies by virtue of section 135**]** as not involving a disposal by **[**F18company A**]**.

[F19(3A) Subsection (1) above does not apply—

(a) if section 91A of the Finance Act 1996 (shares subject to third party obligations)—

(i) does not apply in the case of the asset in relation to company A immediately before the disposal, but

(ii) does apply in the case of the asset in relation to company B immediately after its acquisition, or

(b) if that section—

(i) applies in the case of the asset in relation to company A immediately before the disposal, but

(ii) does not apply in the case of the asset in relation to company B immediately after its acquisition.**]**

(4) For the purposes of subsection (1) above, so far as the consideration for the disposal consists of money or money's worth by way of compensation for any kind of damage or injury to assets, or for the destruction or dissipation of assets or for anything which depreciates or might depreciate an asset, the disposal shall be treated as being to the person who, whether as an insurer or otherwise, ultimately bears the burden of furnishing that consideration.

[F20(5) In subsection (2)(cd) above "qualifying friendly society" means a company which is a qualifying society for the purposes of section 461B of the Taxes Act (incorporated friendly societies entitled to exemption from income tax and corporation tax on certain profits).**]**

[F21(6) Subsection (1) above applies notwithstanding any provision in this Act fixing the amount of the consideration deemed to be received on a disposal or given on an acquisition.

But where it is assumed for any purpose that a member of a group of companies has sold or acquired an asset, it shall be assumed also that it was not a sale or acquisition to which this section applies.**]**

Textual Amendments

F8 S. 171(1)(1A) substituted for s. 171(1) (with effect in accordance with Sch. 29 para. 2(6) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 29 para. 2(2)** (with Sch. 29 para. 46(5))

F9 Word in s. 171(1A) substituted (with effect in accordance with s. 155(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 27 para. 2(3)**

F10 Words in s. 171(2)(a) substituted (with effect in accordance with Sch. 29 para. 2(6) of the amending Act) by Finance Act 2000 (c. 17), Sch. 29 para. 2(3)(a) (with Sch. 29 para. 46(5))

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F11 S. 171(2)(cc) inserted (with application in accordance with s. 135(4) of the amending Act) by Finance Act 1998 (c. 36), **s. 135(1)**

F12 S. 171(2)(cd) inserted (with application in accordance with s. 136(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 136(2)**

F13 S. 171(2)(e) and preceding word repealed (with effect in accordance with s. 251(1)(a)(7) of the amending Act) by Finance Act 1994 (c. 9), s. 251(7)(b), **Sch. 26 Pt. VIII(1)**

F14 S. 171(2)(da) and preceding word inserted (19.7.2006) by Finance Act 2006 (c. 25), **s. 135**

F15 S. 171(2)(db) and preceding word inserted (with effect in accordance with Sch. 5 para. 10(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 5 para. 10(1)**

F16 Words in s. 171(2) substituted (with effect in accordance with Sch. 29 para. 2(6) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 29 para. 2(3)(b)** (with Sch. 29 para. 46(5))

F17 Words in s. 171(3) substituted (with effect in accordance with Sch. 9 paras. 7, 8 of the amending Act) by Finance Act 2002 (c. 23), **Sch. 9 para. 5(10)**

F18 Words in s. 171(3) substituted (with effect in accordance with Sch. 29 para. 2(6) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 29 para. 2(4)** (with Sch. 29 para. 46(5))

F19 S. 171(3A) inserted (with effect in accordance with Sch. 7 para. 9(3) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 9(2)**

F20 S. 171(5) inserted (with application in accordance with s. 136(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 136(3)**

F21 S. 171(6) added (with effect in accordance with Sch. 29 para. 2(6) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 29 para. 2(5)** (with Sch. 29 para. 46(5))

Modifications etc. (not altering text)

C5 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

C6 Ss. 170-181 restricted (12.1.2000) by Greater London Authority Act 1999 (c. 29), **ss. 419(3)**, 425(2); S.I. 1999/3434, art. 2

C9 Ss. 170-181 modified (5.10.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 9 para. 35(a)** (with s. 38(2)); S.I. 2004/2575, art. 2(1), Sch. 1

C16 S. 171 excluded (27.7.1993 with application as mentioned in s. 165(1)) by 1993 c. 34, s. 169, **Sch. 17 para. 7(2)(b)**

C17 Ss. 171, 172 restricted (with effect in accordance with s. 131(4) of the amending Act) by Finance Act 1995 (c. 4), **s. 131(1)**(2)(a)

C18 S. 171 applied (with modifications) (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 29 para. 86(6)**

C19 S. 171 modified (19.7.2006) by Finance Act 2006 (c. 25), **s. 136(2)(a)**

C20 S. 171 excluded (with effect in accordance with reg. 1(2) of the amending S.I.) by The Taxation of Securitisation Companies Regulations 2006 (S.I. 2006/3296), regs. 1(1), **18(1)**

C21 S. 171(1) excluded (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 2(3)**

C22 S. 171(1) excluded (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 7(3)**

C23 S. 171(1) excluded (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 25(3)**

C24 S. 171(1) restricted (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), **Sch. 3 para. 4(1)**

C25 S. 171(1) excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1), **Sch. 7 para. 2(2)** (with Sch. 7 para. 9(1))

C26 S. 171(1) excluded (1.2.2001) by Transport Act 2000 (c. 38), s. 275(1), Sch. 7 paras. 2(4), 20(5); S.I. 2001/57, **art. 3(1)**

C27 S. 171(2)(cc) excluded (with effect in accordance with reg. 1(2)(b) of the amending S.I.) by The Venture Capital Trust (Winding up and Mergers) (Tax) Regulations 2004 (S.I. 2004/2199), regs. 1(1), **12(2)**

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[F22171ANotional transfers within a group.

(1) This section applies where—

(a) two companies ("A" and "B") are members of a group of companies; and

(b) A disposes of an asset to a person who is not a member of the group ("C").

(2) Subject to subsections (3) and (4) below, A and B may, by notice in writing to an officer of the Board, jointly elect that, for the purposes of corporation tax on chargeable gains—

(a) the asset, or any part of it, shall be deemed to have been transferred by A to B immediately before the disposal to C;

(b) section 171(1) shall be deemed to have applied to that transfer; F23...

(c) the disposal of the asset or part to C shall be deemed to have been made by B[F24; and

(d) any incidental costs to A of making the actual disposal to C shall be deemed to be incidental costs to B of making the deemed disposal to C].

(3) No election may be made under subsection (2) above unless section 171(1) would have applied to an actual transfer of the asset or part from A to B.

F25[(3ZA) In a case where B—

(a) is not resident in the United Kingdom, but

(b) is carrying on a trade in the United Kingdom through a permanent establishment there,

the asset or part deemed to be transferred to B by A is to be treated for the purposes of subsections (2)(c) and (3) above as having been acquired by B for use by or for the purposes of the permanent establishment; but that shall not be taken to affect the question whether or not the asset or part is situated in the United Kingdom at any time.]

F26[(3A) Section 440(3) of the Taxes Act does not cause subsection (3) above to prevent the making of an election in a case where B is an insurance company; and in such a case the asset or part deemed to be transferred to B by A, and by B to C, is to be treated for the purposes of subsections (2)(c) and (3) above as not being part of B's long-term insurance fund.

"Insurance company" and "long-term insurance fund" have the same meaning as in Chapter 1 of Part 12 of the Taxes Act (see section 431(2) of that Act).]

(4) An election under [F27subsection (2) above] must be made [F28on or before] the second anniversary of the end of the accounting period of A in which the disposal to C was made.

(5) Any payment by A to B, or by B to A, in pursuance of an agreement between them in connection with the election—

(a) shall not be taken into account in computing profits or losses of either company for corporation tax purposes, and

(b) shall not for any purposes of the Corporation Tax Acts be regarded as a distribution F29... ,

provided it does not exceed the amount of the chargeable gain or allowable loss that is treated, as a result of the disposal, as accruing to B.]

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Textual Amendments

F22 S. 171A inserted (with effect in accordance with s. 101(2) of the amending Act) by Finance Act 2000 (c. 17), **s. 101(1)**

F23 Word in s. 171A(2) omitted (11.5.2001) by virtue of Finance Act 2001 (c. 9), **s. 77(2)** (with Sch. 3)

F24 S. 171A(2)(d) and preceding word added (11.5.2001) by Finance Act 2001 (c. 9), **s. 77(2)** (with Sch. 3)

F25 S. 171A(3ZA) inserted (with effect in accordance with s. 36(3) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **s. 36(2)**

F26 S. 171A(3A) inserted (with effect in accordance with Sch. 33 para. 17(4) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 17(2)**

F27 Word in s. 171A(4) substituted (with effect in accordance with Sch. 33 para. 17(4) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 17(3)**

F28 Words in s. 171A(4) substituted (11.5.2001) by Finance Act 2001 (c. 9), **s. 77(3)** (with Sch. 3)

F29 Words in s. 171A(5)(b) repealed (with effect in accordance with Sch. 11 Pt. 2(7) Note of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 11 Pt. 2(7)**

Modifications etc. (not altering text)

C9 Ss. 170-181 modified (5.10.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 9 para. 35(a)** (with s. 38(2)); S.I. 2004/2575, art. 2(1), Sch. 1

C28 S. 171A modified (19.7.2006) by Finance Act 2006 (c. 25), **s. 136(2)(a)**

F30 172 Transfer of United Kingdom branch or agency.

. . . . . .

Textual Amendments

F30 S. 172 repealed (with effect in accordance with Sch. 29 para. 3(2), Sch. 40 Pt. 2(12) Note 5 of the amending Act) by Finance Act 2000 (c. 17), Sch. 29 para. 3(1), **Sch. 40 Pt. II(12)** (with Sch. 29 para. 46(5))

[F31 173 Transfers within a group: trading stock.

(1) Where—

(a) a company ("company A") acquires an asset as trading stock of a trade to which this section applies,

(b) the acquisition is from a company ("company B") that at the time of the acquisition is a member of the same group of companies, and

(c) the asset did not form part of the trading stock of any such trade carried on by company B,

company A is treated for the purposes of section 161 as having acquired the asset otherwise than as trading stock and immediately appropriated it for the purposes of the trade as trading stock.

(2) Where—

(a) a company ("company C") disposes of an asset forming part of the trading stock of a trade to which this section applies carried on by that company,

(b) the disposal is to another company ("company D") that at the time of the disposal is a member of the same group of companies, and

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(c) the asset is acquired by company D otherwise than as trading stock of any such trade carried on by it,

company C is treated for the purposes of section 161 as having appropriated the asset immediately before the disposal for some purpose other than the purpose of use as trading stock.

(3) The trades to which this section applies are—

(a) any trade carried on by a company resident in the United Kingdom, and

(b) any trade carried on in the United Kingdom through a **[**F32permanent establishment**]** by a company not so resident.**]**

Textual Amendments

F31 S. 173 substituted (with effect in accordance with Sch. 29 para. 11(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 29 para. 11(1)** (with Sch. 29 para. 46(5))

F32 Words in s. 173(3)(b) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 153(1)(b)**

Modifications etc. (not altering text)

C5 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

C6 Ss. 170-181 restricted (12.1.2000) by Greater London Authority Act 1999 (c. 29), **ss. 419(3)**, 425(2); S.I. 1999/3434, art. 2

C9 Ss. 170-181 modified (5.10.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 9 para. 35(a)** (with s. 38(2)); S.I. 2004/2575, art. 2(1), Sch. 1

174 Disposal or acquisition outside a group.

F33(1) . . . . . .

F33(2) . . . . . .

F33(3) . . . . . .

(4) Schedule 2 shall apply in relation to a disposal of an asset by a company which is or has been a member of a group of companies, and which acquired the asset from another member of the group **[**F34in a transfer to which section 171(1) applied**]**, as if all members of the group for the time being were the same person, and as if the acquisition or provision of the asset by the group, so taken as a single person, had been the acquisition or provision of it by the member disposing of it.

F35(5) . . . . . .

Textual Amendments

F33 S. 174(1)-(3) repealed (with effect in accordance with Sch. 40 Pt. II(12) Note 6 of the amending Act) by Finance Act 2000 (c. 17), **Sch. 40 Pt. II(12)** (with Sch. 29 para. 46(5))

F34 Words in s. 174(4) substituted (with effect in accordance with Sch. 29 para. 13(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 29 para. 13(2)** (with Sch. 29 paras. 13(5), 46(5))

F35 S. 174(5) repealed (with effect in accordance with Sch. 29 para. 13(4), Sch. 40 Pt. II(12) Note 6 of the amending Act) by Finance Act 2000 (c. 17), **Sch. 29 para. 13(3)**, Sch. 40 Pt. II(12) (with Sch. 29 paras. 13(5), 46(5))

Status: *Point in time view as at 19/07/2007.*
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Modifications etc. (not altering text)

C5 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

C6 Ss. 170-181 restricted (12.1.2000) by Greater London Authority Act 1999 (c. 29), **ss. 419(3)**, 425(2); S.I. 1999/3434, art. 2

C9 Ss. 170-181 modified (5.10.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 9 para. 35(a)** (with s. 38(2)); S.I. 2004/2575, art. 2(1), Sch. 1

C29 S. 174 modified (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 21(2)** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

175 Replacement of business assets by members of a group.

(1) Subject to subsection (2) below, for the purposes of sections 152 to 158 all the trades **[**F36to which this section applies**]** carried on by members of a group of companies shall, for the purposes of corporation tax on chargeable gains, be treated as a single trade F37... .

[F38(1A) The trades to which this section applies are—

(a) any trade carried on by a company that is resident in the United Kingdom, and

(b) any trade carried on in the United Kingdom through a **[**F39permanent establishment**]** by a company not so resident.**]**

(2) Subsection (1) above does not apply where so much of the consideration for the disposal of the old assets as is applied in acquiring the new assets or the interest in them is so applied by a member of the group which is a dual resident investing company F40... and in this subsection "the old assets" and "the new assets" have the same meanings as in section 152.

[F41(2A) Section 152 **[**F42or 153**]** shall apply where—

(a) the disposal is by a company which, at the time of the disposal, is a member of a group of companies,

(b) the acquisition is by another company which, at the time of the acquisition, is a member of the same group, and

[F43(ba) the conditions in subsection (2AA) below are met, and**]**

(c) the claim is made by both companies,

as if both companies were the same person.

[F44(2AA) The conditions referred to in subsection (2A)(ba) above are—

(a) that the company making the disposal is resident in the United Kingdom at the time of the disposal, or the assets are chargeable assets in relation to that company immediately before that time, and

(b) that the acquiring company is resident in the United Kingdom at the time of the acquisition, or the assets are chargeable assets in relation to that company immediately after that time.

For this purpose an asset is a "chargeable asset" in relation to a company at any time if, were the asset to be disposed of by the company at that time, any gain accruing to the company would be a chargeable gain and would by virtue of section **[**F4510B**]** form part of its chargeable profits for corporation tax purposes.**]**

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(2B) Section 152 **[**[F46]or 153**]** shall apply where a company which is a member of a group of companies but is not carrying on a trade—

(a) disposes of assets (or an interest in assets) used, and used only, for the purposes of the trade which (in accordance with subsection (1) above) is treated as carried on by the members of the group which carry on a trade, or

(b) acquires assets (or an interest in assets) taken into use, and used only, for those purposes,

as if the first company were carrying on that trade.

(2C) **[**[F47]Neither section 152 nor section 153 shall**]** apply if the acquisition of, or of the interest in, the new assets—

(a) is made by a company which is a member of a group of companies, and

(b) is one to which any of the enactments specified in section 35(3)(d) applies.**]**

[[F48](3) Section 154(2) applies where the company making the claim is a member of a group of companies—

(a) as if all members of the group for the time being carrying on a trade to which this section applies were the same person, and

(b) in accordance with subsection (1) above, as if all those trades were the same trade;

so that the gain accrues to the member of the group holding the asset concerned on the occurrence of the event mentioned in section 154(2).**]**

(4) Subsection (2) above shall apply where the acquisition took place before 20th March 1990 and the disposal takes place within the period of 12 months beginning with the date of the acquisition or such longer period as the Board may by notice allow with the omission of the words from “or a company" to “the acquisition".

Textual Amendments

F36 Words in s. 175(1) inserted (with effect in accordance with Sch. 29 para. 10(7) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 29 para. 10(2)** (with Sch. 29 paras. 10(8), 46(5))

F37 Words in s. 175(1) repealed (with effect in accordance with Sch. 29 Pt. VIII(4) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. VIII(4)**

F38 S. 175(1A) inserted (with effect in accordance with Sch. 29 para. 10(7) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 29 para. 10(3)** (with Sch. 29 paras. 10(8), 46(5))

F39 Words in s. 175(1A)(b) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 153(1)(b)**

F40 Words in s. 175(2) repealed (with effect in accordance with s. 251(1)(a)(8) of the amending Act) by Finance Act 1994 (c. 9), s. 251(8), **Sch. 26 Pt. VIII(1)**

F41 S. 175(2A)-(2C) inserted (retrospectively as respects s. 175(2A), with application in accordance with s. 48(5) of the amending Act as respects s. 175(2B)(2C)) by Finance Act 1995 (c. 4), **s. 48(1)**(3) (with s. 48(4)(5))

F42 Words in s. 175(2A) inserted (with effect in accordance with s. 121(8) of the amending Act) by Finance Act 1996 (c. 8), **s. 141(3)(a)**

F43 S. 175(2A)(ba) inserted (with effect in accordance with Sch. 29 para. 10(7) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 29 para. 10(4)** (with Sch. 29 paras. 10(8), 46(5))

F44 S. 175(2AA) inserted (with effect in accordance with Sch. 29 para. 10(7) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 29 para. 10(5)** (with Sch. 29 paras. 10(8), 46(5))

F45 Word in s. 175(2AA) substituted (with effect in accordance with s. 155(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 27 para. 2(3)**

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F46 Words in s. 175(2B) inserted (with effect in accordance with s. 121(8) of the amending Act) by Finance Act 1996 (c. 8), **s. 141(3)(a)**

F47 Words in s. 175(2C) substituted (with effect in accordance with s. 121(8) of the amending Act) by Finance Act 1996 (c. 8), **s. 141(3)(b)**

F48 S. 175(3) substituted (with effect in accordance with Sch. 29 para. 10(7) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 29 para. 10(6)** (with Sch. 29 paras. 10(8), 46(5))

Modifications etc. (not altering text)

C5 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

C6 Ss. 170-181 restricted (12.1.2000) by Greater London Authority Act 1999 (c. 29), **ss. 419(3)**, 425(2); S.I. 1999/3434, art. 2

C9 Ss. 170-181 modified (5.10.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 9 para. 35(a)** (with s. 38(2)); S.I. 2004/2575, art. 2(1), Sch. 1

C30 S. 175(2A)(c) restricted (1.5.1995) by Finance Act 1995 (c. 4), **s. 48(4)**

Losses attributable to depreciatory transactions

176 Depreciatory transactions within a group.

(1) This section has effect as respects a disposal of shares in, or securities of, a company ("the ultimate disposal") if the value of the shares or securities has been materially reduced by a depreciatory transaction effected on or after 31st March 1982; and for this purpose "depreciatory transaction" means—

(a) any disposal of assets at other than market value by one member of a group of companies to another, or

(b) any other transaction satisfying the conditions of subsection (2) below,

except that a transaction shall not be treated as a depreciatory transaction to the extent that it consists of a payment which is required to be or has been brought into account, for the purposes of corporation tax on chargeable gains, in computing a chargeable gain or allowable loss accruing to the person making the ultimate disposal.

(2) The conditions referred to in subsection (1)(b) above are—

(a) that the company, the shares in which, or securities of which, are the subject of the ultimate disposal, or any 75 per cent. subsidiary of that company, was a party to the transaction, and

(b) that the parties to the transaction were or included 2 or more companies which at the time of the transaction were members of the same group of companies.

(3) Without prejudice to the generality of subsection (1) above, the cancellation of any shares in or securities of one member of a group of companies under section 135 of the [M5]Companies Act 1985 shall, to the extent that immediately before the cancellation those shares or securities were the property of another member of the group, be taken to be a transaction fulfilling the conditions in subsection (2) above.

(4) If the person making the ultimate disposal is, or has at any time been, a member of the group of companies referred to in subsection (1) or (2) above, any allowable loss accruing on the disposal shall be reduced to such extent as **[**[F49]is**]** just and reasonable having regard to the depreciatory transaction, but if the person making the ultimate disposal is not a member of that group when he disposes of the shares or securities, no reduction of the loss shall be made by reference to a depreciatory transaction which took place when that person was not a member of that group.

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(5) **[**F50A reduction under subsection (4) above shall be made**]** on the footing that the allowable loss ought not to reflect any diminution in the value of the company's assets which was attributable to a depreciatory transaction, but allowance may be made for any other transaction on or after 31st March 1982 which has enhanced the value of the company's assets and depreciated the value of the assets of any other member of the group.

(6) If, under subsection (4) above, a reduction is made in an allowable loss, any chargeable gain accruing on a disposal of the shares or securities of any other company which was a party to the depreciatory transaction by reference to which the reduction was made, being a disposal not later than 6 years after the depreciatory transaction, shall be reduced to such extent as **[**F51is**]** just and reasonable having regard to the effect of the depreciatory transaction on the value of those shares or securities at the time of their disposal, but the total amount of any one or more reductions in chargeable gains made by reference to a depreciatory transaction shall not exceed the amount of the reductions in allowable losses made by reference to that depreciatory transaction.

All such adjustments, whether by way of discharge or repayment of tax, or otherwise, as are required to give effect to the provisions of this subsection may be made at any time.

(7) For the purposes of this section—

(a) "securities" includes any loan stock or similar security whether secured or unsecured,

(b) references to the disposal of assets include references to any method by which one company which is a member of a group appropriates the goodwill of another member of the group, F52...

F52(c) . . . . . .

(8) References in this section to the disposal of shares or securities include references to the occasion of the making of a claim under section 24(2) that the value of shares or securities has become negligible, and references to a person making a disposal shall be construed accordingly.

(9) In any case where the ultimate disposal is not one to which section 35(2) applies, the references above to 31st March 1982 shall be read as references to 6th April 1965.

Textual Amendments

F49 Words in s. 176(4) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 57(1)**

F50 Words in s. 176(5) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 57(2)**

F51 Words in s. 176(6) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 57(1)**

F52 S. 176(7)(c) and preceding word repealed (with effect in accordance with Sch. 29 para. 24(2) of the amending Act) by Finance Act 2000 (c. 17), Sch. 29 para. 24(1), **Sch. 40 Pt. II(12)** (with Sch. 29 para. 46(5))

Modifications etc. (not altering text)

C5 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

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C6 Ss. 170-181 restricted (12.1.2000) by Greater London Authority Act 1999 (c. 29), **ss. 419(3)**, 425(2); S.I. 1999/3434, art. 2

C9 Ss. 170-181 modified (5.10.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 9 para. 35(a)** (with s. 38(2)); S.I. 2004/2575, art. 2(1), Sch. 1

C31 S. 176 modified (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 18(2)**

C32 S. 176 applied (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), s. 105, **Sch. 15 para. 8(9)**

C33 S. 176(1) applied (23.3.1995) by The Exchange Gains and Losses (Transitional Provisions) Regulations 1994 (S.I. 1994/3226), regs. 1(2), **9(6)**

C34 S. 176(2) applied (23.3.1995) by The Exchange Gains and Losses (Transitional Provisions) Regulations 1994 (S.I. 1994/3226), regs. 1(2), **14(4)**

Marginal Citations

M5 1985 c. 6.

177 Dividend stripping.

(1) The provisions of this section apply where one company ("the first company") has a holding in another company ("the second company") and the following conditions are fulfilled—

(a) that the holding amounts to, or is an ingredient in a holding amounting to, 10 per cent. of all holdings of the same class in the second company,

(b) that the first company is not a dealing company in relation to the holding,

(c) that a distribution is or has been made to the first company in respect of the holding, and

(d) that the effect of the distribution is that the value of the holding is or has been materially reduced.

(2) Where this section applies in relation to a holding, section 176 shall apply, subject to subsection (3) below, in relation to any disposal of any shares or securities comprised in the holding, whether the disposal is by the first company or by any other company to which the holding is transferred by a transfer to which section **[**[F53]140A,**][**[F54]or 171**]** applies, as if the distribution were a depreciatory transaction and, if the companies concerned are not members of a group of companies, as if they were.

(3) The distribution shall not be treated as a depreciatory transaction to the extent that it consists of a payment which is required to be or has been brought into account, for the purposes of corporation tax on chargeable gains, in computing a chargeable gain or allowable loss accruing to the person making the ultimate disposal.

(4) This section shall be construed as one with section 176, and in any case where the ultimate disposal is not one to which section 35(2) applies, the reference in subsection (1)(c) above to a distribution does not include a distribution made before 30th April 1969.

(5) For the purposes of this section a company is "a dealing company" in relation to a holding if a profit on the sale of the holding would be taken into account in computing the company's trading profits.

(6) References in this section to a holding in a company refer to a holding of shares or securities by virtue of which the holder may receive distributions made by the company, but so that—

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(a) a company's holdings of different classes in another company shall be treated as separate holdings, and

(b) holdings of securities which differ in the entitlements or obligations they confer or impose shall be regarded as holdings of different classes.

(7) For the purposes of subsection (1) above—

(a) all a company's holdings of the same class in another company are to be treated as ingredients constituting a single holding, and

(b) a company's holding of a particular class shall be treated as an ingredient in a holding amounting to 10 per cent. of all holdings of that class if the aggregate of that holding and other holdings of that class held by connected persons amounts to 10 per cent. of all holdings of that class,

and section 286 shall have effect in relation to paragraph (b) above as if, in subsection (7) of that section, after the words "or exercise control of" in each place where they occur there were inserted the words " or to acquire a holding in ".

Textual Amendments

F53 Words in s. 177(2) inserted (*retrosp.*) by 1992 c. 48, **s. 46(1)(6)**

F54 Words in s. 177(2) substituted (with effect in accordance with Sch. 29 para. 25(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 29 para. 25(1)** (with Sch. 29 para. 46(5))

Modifications etc. (not altering text)

C5 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

C6 Ss. 170-181 restricted (12.1.2000) by Greater London Authority Act 1999 (c. 29), **ss. 419(3)**, 425(2); S.I. 1999/3434, art. 2

C9 Ss. 170-181 modified (5.10.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 9 para. 35(a)** (with s. 38(2)); S.I. 2004/2575, art. 2(1), Sch. 1

C35 S. 177: modified (27.7.1993 with application as mentioned in s. 165(1)) by 1993 c. 34, s. 169, **Sch. 17 paras. 5(1)**; modified (27.7.1993 with application as mentioned in s. 165(1)) by 1993 c. 34, s. 169, **Sch. 17 paras. 5(3)**; modified (27.7.1993 with application as mentioned in s. 165(1)) by 1993, s. 169, Sch. 17 paras. 6(2); modified (27.7.1993 with applicaton as mentioned in s. 165(1)) by 1993 c. 34, **Sch. 17 paras. 6(3)**

[177A F55 Restriction on set-off of pre-entry losses.

Schedule 7A to this Act (which makes provision in relation to losses accruing to a company before the time when it becomes a member of a group of companies and losses accruing on assets held by any company at such a time) shall have effect.]

Textual Amendments

F55 S. 177A inserted (27.7.1993 with application as mentioned in s. 88(3)) by 1993 c. 34, **s. 88(1)**

Modifications etc. (not altering text)

C5 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

C6 Ss. 170-181 restricted (12.1.2000) by Greater London Authority Act 1999 (c. 29), **ss. 419(3)**, 425(2); S.I. 1999/3434, art. 2

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C9 Ss. 170-181 modified (5.10.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 9 para. 35(a)** (with s. 38(2)); S.I. 2004/2575, art. 2(1), Sch. 1

[F56 Pre-entry gains]

Textual Amendments

F56 S. 177B and cross-heading inserted (with effect in accordance with s. 137(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 137(1)**

F57 177B Restrictions on setting losses against pre-entry gains.

. . . . . .

Textual Amendments

F57 S. 177B repealed (with effect in accordance with s. 70(6)-(8) of the amending Act) by Finance Act 2006 (c. 25), s. 70(4), **Sch. 26 Pt. 3(9)** (with s. 70(10)-(11))

Companies leaving groups

F58 178 Company ceasing to be member of group: pre-appointed day cases.

. . . . . .

Textual Amendments

F58 S. 178 repealed (28.7.2000) by Finance Act 2000 (c. 17), Sch. 29 para. 26, **Sch. 40 Pt. II(12)** (with Sch. 29 para. 46(5))

179 Company ceasing to be member of group: post-appointed day cases.

[F59(1) This section applies where—

(a) a company ("company A") acquires an asset from another company ("company B") at a time when company B is a member of a group,

(b) the conditions in subsection (1A) below are met, and

(c) company A ceases to be a member of that group within the period of six years after the time of the acquisition.

References in this section to a company ceasing to be a member of a group of companies do not apply to cases where a company ceases to be a member of a group in consequence of another member of the group ceasing to exist.

(1A) The conditions referred to in subsection (1)(b) above are—

(a) that company A is resident in the United Kingdom at the time it acquires the asset, or the asset is a chargeable asset in relation to that company immediately after that time, and

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(b) that company B is resident in the United Kingdom at the time of that acquisition, or the asset is a chargeable asset in relation to that company immediately before that time.

For this purpose an asset is a "chargeable asset" in relation to a company at any time if, were the asset to be disposed of by the company at that time, any gain accruing to the company would be a chargeable gain and would by virtue of section **[**F60 10B**]** form part of its chargeable profits for corporation tax purposes.**]**

[F61 (1B) Where, as part of the process of a merger to form an SE in circumstances in which section 140E applies, a company which is a member of a group ("Group 1") ceases to exist and in consequence of that cessation—

(a) assets are transferred to the SE, or

(b) shares in one or more companies which were also members of the group are transferred to the SE,

a company which has ceased to exist, or the shares in which have been transferred to the SE, shall not be treated for the purposes of this section as having left Group 1.

(1C) If subsection (1B) applies in relation to a company then for the purposes of this section—

(a) the SE and a company which has ceased to exist in consequence of the merger to form the SE shall be treated as the same entity, and

(b) if the SE is a member of a group ("Group 2") following its formation (whether or not as the principal company of the group) a company which was a member of Group 1 and became a member of Group 2 in consequence of the formation of the SE shall be treated, for the purposes of this section, as if Group 1 and Group 2 were the same.**]**

(2) Where 2 or more associated companies cease to be members of the group at the same time, subsection (1) above shall not have effect as respects an acquisition by one from another of those associated companies.

[F62 (2A) Where—

(a) a company **[**F63("company A")**]** that has ceased to be a member of a group of companies ("the first group") acquired an asset from another company **[**F64("company B")**]** which was a member of that group at the time of the acquisition,

(b) subsection (2) above applies in the case of **[**F65company A's**]** ceasing to be a member of the first group so that subsection (1) above does not have effect as respects the acquisition of that asset,

(c) **[**F66company A**]** subsequently ceases to be a member of another group of companies ("the second group"), and

(d) there is a connection between the two groups,

subsection (1) above shall have effect in relation to **[**F67company A's**]** ceasing to be a member of the second group as if it had been the second group of which both companies had been members at the time of the acquisition.

(2B) For the purposes of subsection (2A) above there is a connection between the first group and the second group if, at the time when **[**F68company A**]** ceases to be a member of the second group, the company which is the principal company of that group is under the control of—

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(a) the company which is the principal company of the first group or, if that group no longer exists, which was the principal company of that group when **[**F68company A**]** ceased to be a member of it;

(b) any **[**F69person or persons who control the company mentioned in paragraph (a) above or who have had it under their**]** control at any time in the period since **[**F68company A**]** ceased to be a member of the first group; or

(c) any **[**F70person or persons who have, at any time in that period, had under their**]** control either—

(i) a company which would have **[**F71been a person falling**]** within paragraph (b) above if it had continued to exist, or

(ii) a company which would have **[**F71been a person falling**]** within this paragraph (whether by reference to a company which would have **[**F71been a person falling**]** within that paragraph or to a company or series of companies falling within this sub-paragraph).**]**

[F72(2C) This section shall not have effect as respects any asset if, before the time when **[**F68company A**]** ceases to be a member of the group or, as the case may be, the second group, an event has already occurred by virtue of which the company falls by virtue of section 101A(3) to be treated as having sold and immediately reacquired the asset at the time specified in subsection (3) below.**]**

[F73(2D) This section shall not have effect as respects any asset if, before the time when **[**F68company A**]** ceases to be a member of the group or, as the case may be, the second group, an event has already occurred by virtue of which the company falls by virtue of section 101C(3) to be treated as having sold and immediately reacquired the asset at the time specified in subsection (3) below.**]**

(3) If, when **[**F68company A**]** ceases to be a member of the group, **[**F68company A**]**, or an associated company also leaving the group, owns, otherwise than as trading stock—

(a) the asset, or

(b) property to which a chargeable gain has been carried forward from the asset on a replacement of business assets,

then, subject to subsection (4) below, **[**F68company A**]** shall be treated for all the purposes of this Act as if immediately after its acquisition of the asset it had sold, and immediately reacquired, the asset at market value at that time.

(4) Any chargeable gain or allowable loss **[**F74accruing**]** to **[**F75company A**]** on the sale referred to in subsection (3) above shall be treated as accruing to **[**F75company A**][**F76at whichever is the later of the following, that is to say—

(a) the time immediately after the beginning of the accounting period of that company in which or, as the case may be, at the end of which the company ceases to be a member of the group; and

(b) the time when under subsection (3) above it is treated as having reacquired the asset;

[F77and sections 403A and 403B of the Taxes Act (limits on group relief) shall have effect accordingly as if the actual circumstances were as they are treated as having been**]**.**]**

(5) Where, apart from subsection (6) below, a company ceasing to be a member of a group by reason only of the fact that the principal company of the group becomes a member of another group would be treated by virtue of subsection (3) above as selling an asset at any time, subsections (6) to (8) below shall apply.

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(6) The company in question shall not be treated as selling the asset at that time; but if—

(a) within 6 years of that time the company in question ceases at any time ("the relevant time") to satisfy the following conditions, and

(b) at the relevant time, the company in question, or a company in the same group as that company, owns otherwise than as trading stock the asset or property to which a chargeable gain has been carried forward from the asset on a replacement of business assets,

the company in question shall be treated for all the purposes of this Act as if, immediately after its acquisition of the asset, it had sold and immediately reacquired the asset at the value that, at the time of acquisition, was its market value.

(7) Those conditions are—

(a) that the company is a 75 per cent. subsidiary of one or more members of the other group referred to in subsection (5) above, and

(b) that the company is an effective 51 per cent. subsidiary of one or more of those members.

(8) Any chargeable gain or allowable loss accruing to the company on that sale shall be treated as accruing at the relevant time.

(9) Where—

(a) by virtue of this section a company is treated as having sold an asset at any time, and

(b) if at that time the company had in fact sold the asset at market value at that time, then, by virtue of section 30, any allowable loss or chargeable gain accruing on the disposal would have been calculated as if the consideration for the disposal were increased by an amount,

subsections (3) and (6) above shall have effect as if the market value at that time had been that amount greater.

[[F78](9A) Section 416(2) to (6) of the Taxes Act (meaning of control) shall have effect for the purposes of subsection (2B) above as it has effect for the purposes of Part XI of that Act; but a person carrying on a business of banking shall not for the purposes of that subsection be regarded as having control of any company by reason only of having, or of the consequences of having exercised, any rights of that person in respect of loan capital or debt issued or incurred by the company for money lent by that person to the company in the ordinary course of that business.**]**

(10) For the purposes of this section—

(a) 2 or more companies are associated companies if, by themselves, they would form a group of companies,

(b) a chargeable gain is carried forward from an asset to other property on a replacement of business assets if, by one or more claims under sections 152 to 158, the chargeable gain accruing on a disposal of the asset is reduced, and as a result an amount falls to be deducted from the expenditure allowable in computing a gain accruing on the disposal of the other property,

(c) an asset acquired by **[**[F79]company A**]** shall be treated as the same as an asset owned at a later time by that company or an associated company if the value of the second asset is derived in whole or in part from the first asset, and in particular where the second asset is a freehold, and the first asset was a leasehold and the lessee has acquired the reversion.

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F80(11) . . . . . .

F80(12) . . . . . .

(13) Where under this section **[**F81company A**]** is to be treated as having disposed of, and reacquired, an asset, all such recomputations of liability in respect of other disposals, and all such adjustments of tax, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of the provisions of this section shall be carried out.

Textual Amendments

F59 S. 179(1)(1A) substituted for s. 179(1) (with effect in accordance with Sch. 29 para. 4(6) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 29 para. 4(2)** (with Sch. 29 para. 46(5))

F60 Word in s. 179(1A) substituted (with effect in accordance with s. 155(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 27 para. 2(3)**

F61 S. 179(1B)(1C) inserted (with effect in accordance with s. 64(5) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **s. 64(4)**

F62 S. 179(2A)(2B) inserted (with effect in accordance with s. 49(3) of the amending Act) by Finance Act 1995 (c. 4), **s. 49(1)**

F63 Words in s. 179(2A)(a) inserted (with effect in accordance with Sch. 29 para. 4(6) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 29 para. 4(3)(a)(i)** (with Sch. 29 para. 46(5))

F64 Words in s. 179(2A)(a) inserted (with effect in accordance with Sch. 29 para. 4(6) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 29 para. 4(3)(a)(ii)** (with Sch. 29 para. 46(5))

F65 Words in s. 179(2A)(b) substituted (with effect in accordance with Sch. 29 para. 4(6) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 29 para. 4(3)(b)** (with Sch. 29 para. 46(5))

F66 Words in s. 179(2A)(c) substituted (with effect in accordance with Sch. 29 para. 4(6) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 29 para. 4(3)(c)** (with Sch. 29 para. 46(5))

F67 Words in s. 179(2A) substituted (with effect in accordance with Sch. 29 para. 4(6) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 29 para. 4(3)(d)** (with Sch. 29 para. 46(5))

F68 Words in s. 179(2B)-(3) substituted (with effect in accordance with Sch. 29 para. 4(6) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 29 para. 4(4)** (with Sch. 29 para. 46(5))

F69 Words in s. 179(2B)(b) substituted (with effect in accordance with s. 139(2) of the amending Act) by Finance Act 1998 (c. 36), **s. 139(1)(a)**

F70 Words in s. 179(2B)(c) substituted (with effect in accordance with s. 139(2) of the amending Act) by Finance Act 1998 (c. 36), **s. 139(1)(b)**

F71 Words in s. 179(2B)(c) substituted (with effect in accordance with s. 139(2) of the amending Act) by Finance Act 1998 (c. 36), **s. 139(1)(c)**

F72 S. 179(2C) inserted (with application in accordance with s. 133(3) of the amending Act) by Finance Act 1998 (c. 36), **s. 133(2)**

F73 S. 179(2D) inserted (with application in accordance with s. 135(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 135(3)**

F74 Word in s. 179(4) substituted (with effect in accordance with s. 44(3)(5) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 8 para. 2**

F75 Words in s. 179(4) substituted (with effect in accordance with Sch. 29 para. 4(6) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 29 para. 4(4)** (with Sch. 29 para. 46(5))

F76 Words in s. 179(4) substituted (27.7.1993 with effect as mentioned in s. 89(2)) by 1993 c. 34, **s. 89(1)(2)**

F77 Words in s. 179(4) substituted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 7 para. 8**

F78 S. 179(9A) inserted (with effect in accordance with s. 49(3) of the amending Act) by Finance Act 1995 (c. 4), **s. 49(2)**

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F79 Words in s. 179(10)(c) substituted (with effect in accordance with Sch. 29 para. 4(6) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 29 para. 4(4)** (with Sch. 29 para. 46(5))

F80 S. 179(11)(12) repealed (with effect in accordance with Sch. 29 para. 4(7), Sch. 40 Pt. II(12) Note 8 of the amending Act) by Finance Act 2000 (c. 17), Sch. 29 para. 4(5), **Sch. 40 Pt. II(12)** (with Sch. 29 para. 46(5))

F81 Words in s. 179(13) substituted (with effect in accordance with Sch. 29 para. 4(6) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 29 para. 4(4)** (with Sch. 29 para. 46(5))

Modifications etc. (not altering text)

C5 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

C6 Ss. 170-181 restricted (12.1.2000) by Greater London Authority Act 1999 (c. 29), **ss. 419(3)**, 425(2); S.I. 1999/3434, art. 2

C9 Ss. 170-181 modified (5.10.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 9 para. 35(a)** (with s. 38(2)); S.I. 2004/2575, art. 2(1), Sch. 1

C36 S. 179 excluded (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 4(1)**
S. 179: modified (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 4(2)**; modified (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 51(2)**

C37 S. 179 modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 8(1)-(3)**

C38 S. 179 applied (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 8(5)**

C39 S. 179 restricted (3.5.1994) by Finance Act 1994 (c. 9), **s. 250(2)**

C40 S. 179 modified (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 8(1)(2)** (with Sch. 4 paras. 8(3), 14); S.I. 1994/2189, art. 2, Sch.

C41 S. 179 applied (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 8(4)** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

C42 S. 179 modified (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), Sch. 3 para. 5(1)**(2)** (with Sch. 3 para. 5(4))

C43 S. 179 modified (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1), **Sch. 7 para. 6** (with Sch. 7 para. 9(1))

C44 S. 179 excluded (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **3(4)**, **4(2)**

C45 S. 179 modified (12.1.2000) by Greater London Authority Act 1999 (c. 29), s. 425(2), Sch. 33 paras. 3, **9**; S.I. 1999/3434, **art. 2**

C46 S. 179 modified (1.2.2001) by Transport Act 2000 (c. 38), s. 275(1), Sch. 7 paras. 8-10; S.I. 2001/57, **art. 3(1)**

C47 S. 179 modified (15.1.2001) by Transport Act 2000 (c. 38), s. 275(1), **Sch. 26 paras. 11**, **20**, **25**, **32**; S.I. 2000/3376, art. 2

C48 S. 179 modified (5.10.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 9 paras. 5**, **19** (with s. 38(2)); S.I. 2004/2575, art. 2(1), Sch. 1

C49 S. 179 modified (E.W.S.) (24.7.2005) by Railways Act 2005 (c. 14), s. 60(2), **Sch. 10 para. 26**; S.I. 2005/1909, art. 2, Sch.

Commencement Information

I1 s. 179: 30.9.1993 appointed for the purposes of s. 179 by S.I. 1992/3066, **art. 2(2)(d)**

[F82 179A Reallocation within group of gain or loss accruing under section 179

(1) This section applies where—

(a) a company ("company A") is treated by virtue of section 179(3) or (6) as having sold and immediately reacquired an asset at market value, and

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(b) a chargeable gain or an allowable loss accrues to the company on the deemed sale.

(2) In this section "time of accrual" means—

(a) in a case where section 179(3) applies, the time at which, by virtue of section 179(4), the gain or loss referred to in subsection (1) above is treated as accruing to company A;

(b) in a case where section 179(6) applies, the latest time at which the company satisfies the conditions in section 179(7).

(3) If—

(a) a joint election under this section is made by company A and a company ("company C") that was a member of the relevant group at the time of accrual, and

(b) the conditions in subsections (6) to (8) below are all met,

the chargeable gain or allowable loss accruing on the deemed sale, or such part of it as may be specified in the election, shall be treated as accruing not to company A but to company C.

(4) In subsection (3) above "the relevant group" means—

(a) in a case where section 179(3) applies, the group of which company A was a member at the time of accrual;

(b) in a case where section 179(6) applies, the second group referred to in section 179(5).

(5) Where two or more elections are made each specifying a part of the same gain or loss, the total amount specified may not exceed the whole of that gain or loss.

(6) The first condition is that, at the time of accrual, company C—

(a) was resident in the United Kingdom, or

(b) owned assets that were chargeable assets in relation to it.

(7) The second condition is that neither company A nor company C was at that time a qualifying friendly society within the meaning given by section 171(5)).

(8) The third condition is that company C was not at that time an investment trust, a venture capital trust or a dual resident investing company.

(9) A gain or loss treated by virtue of this section as accruing to a company that is not resident in the United Kingdom shall be treated as accruing in respect of a chargeable asset held by that company.

(10) An election under this section must be made—

(a) by notice to an officer of the Board;

(b) no later than two years after the end of the accounting period of company A in which the time of accrual fell.

(11) Any payment by company A to company C, or by company C to company A, in pursuance of an agreement between them in connection with the election—

(a) shall not be taken into account in computing profits or losses of either company for corporation tax purposes, and

(b) shall not for any purposes of the Corporation Tax Acts be regarded as a distribution [F83]... ,

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provided it does not exceed the amount of the chargeable gain or allowable loss that is treated, as a result of the election, as accruing to company C.

(12) For the purposes of this section an asset is a "chargeable asset" in relation to a company at a particular time if any gain accruing to the company on a disposal of the asset by the company at that time would be a chargeable gain and would by virtue of **[**F84section 10B**]** form part of its chargeable profits for corporation tax purposes.**]**

Textual Amendments

F82 S. 179A inserted (with application in accordance with s. 42(4) of the amending Act) by Finance Act 2002 (c. 23), **s. 42(1)**

F83 Words in s. 179A(11)(b) repealed (with effect in accordance with Sch. 11 Pt. 2(7) Note of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 11 Pt. 2(7)**

F84 Words in s. 179A(12) substituted (with effect in accordance with Sch. 4 para. 10(3) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 4 para. 8(2)**

Modifications etc. (not altering text)

C9 Ss. 170-181 modified (5.10.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 9 para. 35(a)** (with s. 38(2)); S.I. 2004/2575, art. 2(1), Sch. 1

C50 S. 179A modified (19.7.2006) by Finance Act 2006 (c. 25), **s. 136(2)(b)**

C51 S. 179A excluded (with effect in accordance with reg. 1(2) of the affecting S.I.) by The Taxation of Securitisation Companies Regulations 2006 (S.I. 2006/3296), regs. 1(1), **18(2)**

[F85**179B Roll-over of degrouping charge on business assets**

(1) Where a company is treated by virtue of section 179(3) or (6) as having sold and immediately reacquired an asset at market value, relief under section 152 or 153 (roll-over relief on replacement of business assets) is available in accordance with this section in relation to any gain accruing to the company on the deemed sale.

(2) For this purpose, sections 152 and 153 and the other enactments specified in Schedule 7AB apply with the modifications set out in that Schedule.

(3) Where there has been an election under section 179A, any claim for relief available in accordance with this section must be made by company C rather than company A.

(4) For this purpose, the enactments modified by Schedule 7AB have effect as if—

(a) references to company A, except those in sections 152(1)(a) and (1B), 153(1B), 153A(5), 159(1), 175 and 198(1), were to company C;

(b) the references to "that company" in section 159(1) and "the company" in section 185(3)(b) were to company C;

(c) the reference to "that trade" in section 198(1) were to a ring fence trade carried on by company C.

(5) Where there has been an election under section 179A in respect of part only of the chargeable gain accruing on the deemed sale of an asset, the enactments modified by Schedule 7AB and subsections (3) and (4) above apply as if the deemed sale had been of a separate asset representing a corresponding part of the asset; and any necessary apportionments shall be made accordingly.

(6) A reference in this section to company A or to company C is to the company referred to as such in section 179A.**]**

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Textual Amendments

F85 S. 179B inserted (with application in accordance with s. 43(4) of the amending Act) by Finance Act 2002 (c. 23), **s. 43(1)**

Modifications etc. (not altering text)

C9 Ss. 170-181 modified (5.10.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 9 para. 35(a)** (with s. 38(2)); S.I. 2004/2575, art. 2(1), Sch. 1

C52 S. 179B modified (19.7.2006) by Finance Act 2006 (c. 25), **s. 136(2)(b)**

F86 180 Transitional provisions.

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Textual Amendments

F86 S. 180 repealed (28.7.2000) by Finance Act 2000 (c. 17), Sch. 29 para. 27, **Sch. 40 Pt. II(12)** (with Sch. 29 para. 46(5))

181 Exemption from charge under 178 or 179 in the case of certain mergers.

(1) Subject to the following provisions of this section, **[**F87section 179 shall not**]** apply in a case where—

(a) as part of a merger, a company ("company A") ceases to be a member of a group of companies ("the A group"); and

(b) F88... the merger was carried out for bona fide commercial reasons and F88... the avoidance of liability to tax was not the main or one of the main purposes of the merger.

(2) In this section "merger" means an arrangement (which in this section includes a series of arrangements)—

(a) whereby one or more companies ("the acquiring company" or, as the case may be, "the acquiring companies") none of which is a member of the A group acquires or acquire, otherwise than with a view to their disposal, one or more interests in the whole or part of the business which, before the arrangement took effect, was carried on by company A; and

(b) whereby one or more members of the A group acquires or acquire, otherwise than with a view to their disposal, one or more interests in the whole or part of the business or each of the businesses which, before the arrangement took effect, was carried on either by the acquiring company or acquiring companies or by a company at least 90 per cent. of the ordinary share capital of which was then beneficially owned by 2 or more of the acquiring companies; and

(c) in respect of which the conditions in subsection (4) below are fulfilled.

(3) For the purposes of subsection (2) above, a member of a group of companies shall be treated as carrying on as one business the activities of that group.

(4) The conditions referred to in subsection (2)(c) above are—

(a) that not less than 25 per cent. by value of each of the interests acquired as mentioned in paragraphs (a) and (b) of subsection (2) above consists of a

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holding of ordinary share capital, and the remainder of the interest, or as the case may be of each of the interests, acquired as mentioned in subsection (2)(b), consists of a holding of share capital (of any description) or debentures or both; and

(b) that the value or, as the case may be, the aggregate value of the interest or interests acquired as mentioned in subsection (2)(a) above is substantially the same as the value or, as the case may be, the aggregate value of the interest or interests acquired as mentioned in subsection (2)(b) above; and

(c) that the consideration for the acquisition of the interest or interests acquired by the acquiring company or acquiring companies as mentioned in subsection (2)(a) above, disregarding any part of that consideration which is small by comparison with the total, either consists of, or is applied in the acquisition of, or consists partly of and as to the balance is applied in the acquisition of, the interest or interests acquired by members of the A group as mentioned in subsection (2)(b) above;

and for the purposes of this subsection the value of an interest shall be determined as at the date of its acquisition.

F89(5) . . . . . .

Textual Amendments

F87 Words in s. 181(1) substituted (with effect in accordance with Sch. 29 para. 28(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 29 para. 28(1)(a)** (with Sch. 29 para. 46(5))

F88 Words in s. 181(1)(b) repealed (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 20 para. 58, **Sch. 41 Pt. V(10)**

F89 S. 181(5) repealed (with effect in accordance with Sch. 29 para. 28(2), Sch. 40 Pt. II(12) Note 9 of the amending Act) by Finance Act 2000 (c. 17), Sch. 29 para. 28(1)(b), **Sch. 40 Pt. II(12)** (with Sch. 29 para. 46(5))

Modifications etc. (not altering text)

C5 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

C6 Ss. 170-181 restricted (12.1.2000) by Greater London Authority Act 1999 (c. 29), **ss. 419(3)**, 425(2); S.I. 1999/3434, art. 2

C9 Ss. 170-181 modified (5.10.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 9 para. 35(a)** (with s. 38(2)); S.I. 2004/2575, art. 2(1), Sch. 1

Restriction on indexation allowance for groups and associated companies

F90182 Disposals of debts.

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Textual Amendments

F90 Ss. 182-184 repealed (with effect in accordance with s. 93(11) of the amending Act) by Finance Act 1994 (c. 9), s. 93(7), **Sch. 26 Pt. V(8)** (with Sch. 12)

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F90 183 Disposals of shares.

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Textual Amendments

F90 Ss. 182-184 repealed (with effect in accordance with s. 93(11) of the amending Act) by Finance Act 1994 (c. 9), s. 93(7), **Sch. 26 Pt. V(8)** (with Sch. 12)

F90 184 Definitions and other provisions supplemental to sections 182 and 183.

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Textual Amendments

F90 Ss. 182-184 repealed (with effect in accordance with s. 93(11) of the amending Act) by Finance Act 1994 (c. 9), s. 93(7), **Sch. 26 Pt. V(8)** (with Sch. 12)

I F91 Restrictions on buying losses or gains etc

Textual Amendments

F91 Ss. 184A-184F and cross-heading inserted (with effect in accordance with s. 70(6)-(8) of the amending Act) by Finance Act 2006 (c. 25), **s. 70(2)** (with s. 70(10)-(11))

184A Restrictions on buying losses: tax avoidance schemes

(1) This section applies for the purposes of corporation tax in respect of chargeable gains if—

(a) at any time ("the relevant time") there is a qualifying change of ownership in relation to a company ("the relevant company") (see section 184C),

(b) a loss (a "qualifying loss") accrues to the relevant company or any other company on a disposal of a pre-change asset (see subsection (3)),

(c) the change of ownership occurs directly or indirectly in consequence of, or otherwise in connection with, any arrangements the main purpose, or one of the main purposes, of which is to secure a tax advantage (see section 184D), and

(d) the advantage involves the deduction of a qualifying loss from any chargeable gains (whether or not it also involves anything else).

(2) A qualifying loss accruing to a company is not to be deductible from chargeable gains accruing to the company F92... .

(3) In this section a "pre-change asset" means an asset which was held by the relevant company before the relevant time (but see also sections 184E and 184F).

(4) In this section "arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

(5) For the purposes of this section it does not matter—

Status: *Point in time view as at 19/07/2007.*
Changes to legislation: *Taxation of Chargeable Gains Act 1992, Chapter I is up to date with all changes known to be in force on or before 13 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) whether a qualifying loss accrues before, after or at the relevant time,

(b) whether a qualifying loss accrues at a time when there are no chargeable gains from which it could be deducted (or could otherwise have been deducted), or

(c) whether the tax advantage is secured for the company to which a qualifying loss accrues or for any other company.

Textual Amendments

F92 Words in s. 184A(2) repealed (with effect in accordance with s. 32(7) of the amending Act) by Finance Act 2007 (c. 11), s. 32(2), **Sch. 27 Pt. 2(4)**

184B Restrictions on buying gains: tax avoidance schemes

(1) This section applies for the purposes of corporation tax in respect of chargeable gains if—

(a) at any time ("the relevant time") there is a qualifying change of ownership in relation to a company ("the relevant company") (see section 184C),

(b) a gain (a "qualifying gain") accrues to the relevant company or any other company on a disposal of a pre-change asset (see subsection (3)),

(c) the change of ownership occurs directly or indirectly in consequence of, or otherwise in connection with, any arrangements the main purpose, or one of the main purposes, of which is to secure a tax advantage, and

(d) the advantage involves the deduction of a loss from a qualifying gain (whether or not it also involves anything else).

(2) In the case of a qualifying gain accruing to a company, a loss accruing to the company is not to be deductible from the gain [F93]... .

(3) In this section a "pre-change asset" means an asset which was held by the relevant company before the relevant time (but see also sections 184E and 184F).

(4) In this section "arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

(5) For the purposes of this section it does not matter—

(a) whether a qualifying gain accrues before, after or at the relevant time,

(b) whether a qualifying gain accrues at a time when there are no losses which could be deducted (or could otherwise have been deducted) from the gain, or

(c) whether the tax advantage is secured for the company to which a qualifying gain accrues or for any other company.

Textual Amendments

F93 Words in s. 184B(2) repealed (with effect in accordance with s. 32(8) of the amending Act) by Finance Act 2007 (c. 11), s. 32(3), **Sch. 27 Pt. 2(4)**

Status: *Point in time view as at 19/07/2007.*
Changes to legislation: *Taxation of Chargeable Gains Act 1992, Chapter I is up to date with all changes known to be in force on or before 13 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

184C Sections 184A and 184B: meaning of "qualifying change of ownership"

(1) For the purposes of sections 184A and 184B, there is a qualifying change of ownership in relation to a company at any time if any one or more of the following occur at that time—

(a) the company joins a group of companies (see subsections (2) to (5)),

(b) the company ceases to be a member of a group of companies,

(c) the company becomes subject to different control (see subsections (6) to (9)).

(2) Whether a company is a member of a group of companies at any time is determined in accordance with section 170.

(3) But, apart from in the excepted case, nothing in section 170(10) or (10A) is to prevent all the companies of one group from being regarded as joining another group when the principal company of the first group becomes a member of the other group at any time.

(4) The excepted case is the case where—

(a) the persons owning the shares of the principal company of the first group immediately before that time are the same as the persons owning the shares of the principal company of the other group immediately after that time,

(b) the principal company of the other group was not the principal company of any group immediately before that time, and

(c) immediately after that time the principal company of the other group had assets consisting entirely (or almost entirely) of shares of the principal company of the first group.

(5) For this purpose, references to shares of a company are to the shares comprised in the issued share capital of the company.

(6) The general rule is that a company becomes subject to different control at any time if any one or more of the following occur—

(a) a person has control of the company at that time (whether alone or together with one or more others) and the person did not previously have control of the company,

(b) a person has control of the company at that time together with one or more others and the person previously had control of the company alone,

(c) a person ceases to have control of the company at that time (whether the person had control alone or together with one or more others).

(7) The general rule is subject to the following exceptions.

(8) A company does not become subject to different control in any case where it joins a group of companies and the case is the excepted case mentioned above.

(9) A company ("the subsidiary") does not become subject to different control at any time in any case where—

(a) immediately before that time the subsidiary is the 75 per cent. subsidiary of another company, and

(b) (although there is a change in the direct ownership of the subsidiary) that other company continues immediately after that time to own it as a 75 per cent. subsidiary.

Status: *Point in time view as at 19/07/2007.*
Changes to legislation: *Taxation of Chargeable Gains Act 1992, Chapter I is up to date with all changes known to be in force on or before 13 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

184D Sections 184A and 184B: meaning of "tax advantage"

For the purposes of sections 184A and 184B, "tax advantage" means—

(a) relief or increased relief from corporation tax,

(b) repayment or increased repayment of corporation tax,

(c) the avoidance or reduction of a charge to corporation tax or an assessment to corporation tax, or

(d) the avoidance of a possible assessment to corporation tax.

184E Sections 184A and 184B: "pre-change assets": basic rules

(1) If—

(a) a company other than the relevant company makes a disposal of an asset, and

(b) the asset has been disposed of at any time after the relevant time by a disposal to which section 171(1) does not apply (a "non-section 171(1) transfer"),

the asset ceases to be regarded as a pre-change asset for the purposes of sections 184A and 184B (but see also subsections (10) and (11)).

(2) But (without affecting the generality of the provision made by the following subsection) if, on a non-section 171(1) transfer,—

(a) an asset would cease to be regarded as a pre-change asset as a result of subsection (1), and

(b) the company making the non-section 171(1) transfer retains any interest in or over the asset,

that interest is to be regarded as a pre-change asset for the purposes of sections 184A and 184B.

(3) If—

(a) the relevant company or any other company holds an asset ("the new asset") at or after the relevant time,

(b) the value of the new asset derives in whole or in part from a pre-change asset, and

(c) the new asset is not acquired by the company concerned as a result of a non-section 171(1) transfer,

the new asset is also to be regarded as a pre-change asset for the purposes of sections 184A and 184B.

(4) For this purpose the cases in which the value of an asset may be derived from any other asset include any case where—

(a) assets have been merged or divided,

(b) assets have changed their nature, or

(c) rights or interests in or over assets have been created or extinguished.

(5) If a pre-change asset is "the old asset" for the purposes of section 116 (reorganisations, conversions and reconstructions), "the new asset" for the purposes of that section is also to be regarded as a pre-change asset for the purposes of sections 184A and 184B.

(6) If a pre-change asset is the "original shares" for the purposes of sections 127 to 131 (reorganisation or reduction of share capital), the "new holding" for the purposes of those sections is also to be regarded as a pre-change asset for the purposes of sections 184A and 184B.

Status: *Point in time view as at 19/07/2007.*
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(7) The following subsection applies if, as a result of the application of a relevant deferral provision in the case of a disposal of a pre-change asset ("the original disposal"),—

(a) a gain or loss that would otherwise accrue to a company does not so accrue, or

(b) any part of any such gain is treated as forming part of a single chargeable gain which does not accrue to the company on the original disposal,

and a gain or loss does, wholly or partly in consequence of the application of that provision in the case of the original disposal, accrue to the company or any other company on a subsequent occasion.

(8) So much of the gain or loss accruing on the subsequent occasion as accrues in consequence of the application of the relevant deferral provision in the case of the original disposal is to be regarded for the purposes of sections 184A and 184B as accruing on a disposal of a pre-change asset (so far as it would not otherwise be so regarded).

(9) A "relevant deferral provision" means any of the following—

(a) section 139 (reconstruction involving transfer of business),

(b) section 140 (postponement of charge on transfer of assets to non-resident company),

(c) section 140A (transfer of a UK trade),

(d) section 140E (merger leaving assets within UK tax charge),

(e) sections 152 and 153 (replacement of business assets),

(f) section 187 (postponement of charge on deemed disposal under section 185).

(10) If—

(a) a pre-change asset of the relevant company is transferred to another company ("the transferee company"),

(b) any of sections 139, 140A and 140E apply to the companies in the case of the asset, and

(c) the transfer of the asset is made directly or indirectly in consequence of, or otherwise in connection with, the arrangements mentioned in section 184A or 184B,

the asset is to be regarded as a "pre-change asset" in the hands of the transferee company for the purposes of sections 184A and 184B.

(11) In such a case, subsection (1) applies as if the reference in paragraph (a) of that subsection to the relevant company were to the transferee company.

184F Sections 184A and 184B: "pre-change assets": pooling rules

(1) This section applies, in the case of any pre-change asset of the relevant company or any pre-change asset of any company which is acquired on a disposal to which section 171(1) applies, if—

(a) the pre-change asset consists of a holding of securities which falls as a result of any provision of Chapter 1 of Part 4 to be regarded as a single asset ("the pre-change pooled asset"), and

(b) as a result of any disposal or acquisition at any time after the relevant time, any securities ("the other securities") would (but for this section) be regarded as forming part of the pre-change pooled asset.

Status: *Point in time view as at 19/07/2007.*
Changes to legislation: *Taxation of Chargeable Gains Act 1992, Chapter I is up to date with all changes known to be in force on or before 13 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) None of the other securities are to be regarded for the purposes of this Act as forming part of the pre-change pooled asset.

(3) But this does not prevent the other securities from being regarded, as a result of any provision of that Chapter, as forming part of or constituting a different, single asset ("the other pooled asset").

(4) Securities of the same class as the other securities which are disposed of at or after the relevant time—

(a) are to be identified first with the other securities or securities forming part of the other pooled asset,

(b) are to be identified next with securities forming part of the pre-change pooled asset (if the number of securities disposed of exceeds the number identified in accordance with paragraph (a)), and

(c) subject to paragraphs (a) and (b), are to be identified in accordance with the provisions applicable apart from those paragraphs.

(5) The above identification rules apply even if some or all of the securities disposed of are otherwise identified—

(a) by the disposal, or

(b) by a transfer or delivery giving effect to it;

but where a company disposes of securities in one capacity, they are not to be identified with securities which it holds, or can dispose of, only in some other capacity.

(6) Chapter 1 of Part 4 has effect subject to this section.

(7) In this section—

"pre-change asset" means an asset which is pre-change asset for the purposes of section 184A or 184B,

"securities" does not include relevant securities as defined in section 108 but, subject to that, means—

(a) shares or securities of a company, and

(b) any other assets where they are of a nature to be dealt in without identifying the particular assets disposed of or acquired.

(8) For the purposes of this section, shares or securities of a company are not to be treated as being of the same class unless—

(a) they are so treated by the practice of a recognised stock exchange, or

(b) they would be so treated if dealt with on a recognised stock exchange.**]**

[F94184GAvoidance involving losses: schemes converting income to capital

(1) This section applies for the purposes of corporation tax in respect of chargeable gains if conditions A to D are satisfied.

(2) Condition A is that—

(a) any receipt arises to a company ("the relevant company") on a disposal of an asset, and

(b) the receipt arises directly or indirectly in consequence of, or otherwise in connection with, any arrangements.

(3) Condition B is that—

Status: *Point in time view as at 19/07/2007.*
Changes to legislation: *Taxation of Chargeable Gains Act 1992, Chapter I is up to date with all changes known to be in force on or before 13 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) a chargeable gain (the "relevant gain") accrues to the relevant company on the disposal, and

(b) losses accrue (or have accrued) to the relevant company on any other disposal of any asset (whether before or after or as part of the arrangements).

(4) Condition C is that, but for the arrangements, an amount would have fallen to be taken into account wholly or partly instead of the receipt in calculating the income chargeable to corporation tax—

(a) of the relevant company, or

(b) of a company which, at any qualifying time, is a member of the same group as the relevant company.

(5) Condition D is that—

(a) the main purpose of the arrangements, or

(b) one of the main purposes of the arrangements,

is to secure a tax advantage that involves the deduction of any of the losses from the relevant gain (whether or not it also involves anything else).

(6) If the Board consider, on reasonable grounds, that conditions A to D are or may be satisfied, they may give the relevant company a notice in respect of the arrangements (but see also section 184I).

(7) If, when the notice is given, conditions A to D are satisfied, no loss accruing to the relevant company at any time is to be deductible from the relevant gain.

(8) A notice under this section must—

(a) specify the arrangements,

(b) specify the accounting period in which the relevant gain accrues, and

(c) inform the relevant company of the effect of this section.

(9) If relevant gains accrue in more than one accounting period, a single notice under this section may specify all the accounting periods concerned.

(10) In this section—

"arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),

"group", in relation to companies, means a group determined in accordance with section 170,

"qualifying time", in relation to any arrangements, means any time which falls in the period—

(a) beginning with the time at which the arrangements are made, and

(b) ending with the time at which the matters (other than any tax advantage) intended to be secured by the arrangements are secured,

"tax advantage" has the meaning given by section 184D.

Textual Amendments

F94 Ss. 184G-184I inserted (with effect in accordance with s. 71(4) of the amending Act) by Finance Act 2006 (c. 25), **s. 71(1)**

Status: *Point in time view as at 19/07/2007.*
Changes to legislation: *Taxation of Chargeable Gains Act 1992, Chapter I is up to date with all changes known to be in force on or before 13 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

184H Avoidance involving losses: schemes securing deductions

(1) This section applies for the purposes of corporation tax in respect of chargeable gains if conditions A to D are satisfied.

(2) Condition A is that—

(a) a chargeable gain (the "relevant gain") accrues to a company ("the relevant company") directly or indirectly in consequence of, or otherwise in connection with, any arrangements, and

(b) losses accrue (or have accrued) to the relevant company on any disposal of any asset (whether before or after or as part of the arrangements).

(3) Condition B is that the relevant company, or a company connected with the relevant company, incurs any expenditure—

(a) which is allowable as a deduction in calculating its total profits chargeable to corporation tax but which is not allowable as a deduction in computing its gains under section 38, and

(b) which is incurred directly or indirectly in consequence of, or otherwise in connection with, the arrangements.

(4) Condition C is that the main purpose, or one of the main purposes, of the arrangements is to secure a tax advantage that involves both—

(a) the deduction of the expenditure in calculating total profits, and

(b) the deduction of any of the losses from the relevant gain,

whether or not it also involves anything else.

(5) Condition D is that the arrangements are not excluded arrangements. For this purpose arrangements are excluded arrangements if—

(a) the arrangements are made in respect of land or any estate or interest in land,

(b) the arrangements fall within section 779(1) or (2) of the Taxes Act (sale and lease-back: limitation on tax reliefs),

(c) the person to whom the payment mentioned in that subsection is payable is not a company connected with the relevant company, and

(d) the arrangements are made between persons dealing at arm's length.

(6) If the Board consider, on reasonable grounds, that conditions A to D are or may be satisfied, they may give the company a notice in respect of the arrangements (but see also section 184I).

(7) If, when the notice is given, conditions A to D are satisfied, no loss accruing to the company at any time is to be deductible from the relevant gain.

(8) A notice under this section must—

(a) specify the arrangements,

(b) specify the accounting period in which the relevant gain accrues, and

(c) inform the relevant company of the effect of this section.

(9) If relevant gains accrue in more than one accounting period, a single notice under this section may specify all the accounting periods concerned.

(10) In this section—

"arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),

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Changes to legislation: *Taxation of Chargeable Gains Act 1992, Chapter I is up to date with all changes known to be in force on or before 13 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"tax advantage" has the meaning given by section 184D.

(11) For the purposes of this section it does not matter whether the tax advantage is secured for the relevant company or for any other company.

Textual Amendments

F94 Ss. 184G-184I inserted (with effect in accordance with s. 71(4) of the amending Act) by Finance Act 2006 (c. 25), **s. 71(1)**

184I Notices under sections 184G and 184H

(1) Subsection (2) applies if—

(a) the Board give a notice under section 184G or 184H (a "relevant notice") to a company that specifies an accounting period, and

(b) the notice is given before the company has made its company tax return for that accounting period.

(2) If the company makes its return for that period before the end of the applicable 90 day period (see subsection (12)), it may—

(a) make a return that disregards the notice, and

(b) at any time after making the return and before the end of the applicable 90 day period, amend the return for the purpose of complying with the provision referred to in the notice.

(3) If a company has made a company tax return for an accounting period, the Board may give the company a relevant notice in relation to that period only if a notice of enquiry has been given to the company in respect of its return for that period.

(4) After any enquiries into the return for that period have been completed, the Board may give the company a relevant notice only if requirements A and B are met.

(5) Requirement A is that at the time the enquiries into the return were completed, the Board could not have been reasonably expected, on the basis of information made available—

(a) to them before that time, or

(b) to an officer of theirs before that time,

to have been aware that the circumstances were such that a relevant notice could have been given to the company in relation to that period.

(6) For the purposes of requirement A, paragraph 44(2) and (3) of Schedule 18 to the Finance Act 1998 (information made available) applies as it applies for the purposes of paragraph 44(1).

(7) Requirement B is that—

(a) the company or any other person was requested to produce or provide information during an enquiry into the return for that period, and

(b) if the request had been duly complied with, the Board could reasonably have been expected to give the company a relevant notice in relation to that period.

(8) If—

(a) a company makes a company tax return for an accounting period, and

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Changes to legislation: *Taxation of Chargeable Gains Act 1992, Chapter I is up to date with all changes known to be in force on or before 13 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) the company is subsequently given a relevant notice that specifies that period,

it may amend the return for the purpose of complying with the provision referred to in the notice at any time before the end of the applicable 90 day period.

(9) If the relevant notice is given to the company after it has been given a notice of enquiry in respect of its return for the period, no closure notice may be given in relation to its company tax return until—

(a) the end of the applicable 90 day period, or

(b) the earlier amendment of its company tax return for the purpose of complying with the provision referred to in the notice.

(10) If the relevant notice is given to the company after any enquiries into the return for the period are completed, no discovery assessment may be made as regards the chargeable gain to which the notice relates until—

(a) the end of the applicable 90 day period, or

(b) the earlier amendment of the company tax return for the purpose of complying with the provision referred to in the notice.

(11) Subsections (2)(b) and (8) do not prevent a company tax return for a period becoming incorrect if—

(a) a relevant notice is given to the company in relation to that period,

(b) the return is not amended in accordance with subsection (2)(b) or (8) for the purpose of complying with the provision referred to in the notice, and

(c) the return ought to have been so amended.

(12) In this section—

"the applicable 90 day period", in relation to a relevant notice, means the period of 90 days beginning with the day on which the notice is given,

"closure notice" means a notice under paragraph 32 of Schedule 18 to the Finance Act 1998,

"company tax return" means the return required to be delivered pursuant to a notice under paragraph 3 of that Schedule, as read with paragraph 4 of that Schedule,

"discovery assessment" means an assessment under paragraph 41 of that Schedule,

"notice of enquiry" means a notice under paragraph 24 of that Schedule.**]**

Textual Amendments

F94 Ss. 184G-184I inserted (with effect in accordance with s. 71(4) of the amending Act) by Finance Act 2006 (c. 25), **s. 71(1)**

Non-resident and dual resident companies

185 Deemed disposal of assets on company ceasing to be resident in U.K.

(1) This section and section 187 apply to a company if, at any time ("the relevant time"), the company ceases to be resident in the United Kingdom.

(2) The company shall be deemed for all purposes of this Act—

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Changes to legislation: *Taxation of Chargeable Gains Act 1992, Chapter I is up to date with all changes known to be in force on or before 13 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) to have disposed of all its assets, other than assets excepted from this subsection by subsection (4) below, immediately before the relevant time; and

(b) immediately to have reacquired them,

at their market value at that time.

(3) Section 152 shall not apply where the company—

(a) has disposed of the old assets, or of its interest in those assets, before the relevant time; and

(b) acquires the new assets, or its interest in those assets, after that time,

unless the new assets are excepted from this subsection by subsection (4) below.

(4) If at any time after the relevant time the company carries on a trade in the United Kingdom through a **[**F95permanent establishment**]**—

(a) any assets which, immediately after the relevant time, are situated in the United Kingdom and are used in or for the purposes of the trade, or are used or held for the purposes of the **[**F95permanent establishment**]**, shall be excepted from subsection (2) above; and

(b) any new assets which, after that time, are so situated and are so used or so held shall be excepted from subsection (3) above;

and references in this subsection to assets situated in the United Kingdom include references to exploration or exploitation assets and to exploration or exploitation rights.

(5) In this section—

(a) "designated area", "exploration or exploitation activities" and "exploration or exploitation rights" have the same meanings as in section 276;

(b) "exploration or exploitation assets" means assets used or intended for use in connection with exploration or exploitation activities carried on in the United Kingdom or a designated area;

(c) "the old assets" and "the new assets" have the same meanings as in section 152;

and a company shall not be regarded for the purposes of this section as ceasing to be resident in the United Kingdom by reason only that it ceases to exist.

Textual Amendments

F95 Words in s. 185(4) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 153(1)(b)**

Modifications etc. (not altering text)

C5 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

C53 S. 185 excluded (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **3(4)**

F96186 Deemed disposal of assets on company ceasing to be liable to U.K. taxation.

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Status: *Point in time view as at 19/07/2007.*
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Textual Amendments

F96 S. 186 repealed (with effect in accordance with s. 251(1)(a)(9) of the amending Act) by Finance Act 1994 (c. 9), s. 251(9), **Sch. 26 Pt. VIII(1)**

187 Postponement of charge on deemed disposal under section 185 or 186.

(1) If—

(a) immediately after the relevant time, a company to which this section applies by virtue of section 185 [F97]... ("the company") is a 75 per cent. subsidiary of another company ("the principal company") which is resident in the United Kingdom; and

(b) the principal company and the company so elect, by notice given to the inspector within 2 years after that time,

this Act shall have effect in accordance with the following provisions.

(2) Any allowable losses accruing to the company on a deemed disposal of foreign assets shall be set off against the chargeable gains so accruing and—

(a) that disposal shall be treated as giving rise to a single chargeable gain equal to the aggregate of those gains after deducting the aggregate of those losses; and

(b) the whole of that gain shall be treated as not accruing to the company on that disposal but an equivalent amount ("the postponed gain") shall be brought into account in accordance with subsections (3) and (4) below.

(3) If at any time within 6 years after the relevant time the company disposes of any assets ("relevant assets") the chargeable gains on which were taken into account in arriving at the postponed gain, there shall be deemed to accrue to the principal company as a chargeable gain on that occasion the whole or the appropriate proportion of the postponed gain so far as not already taken into account under this subsection or subsection (4) below.

In this subsection "the appropriate proportion" means the proportion which the chargeable gain taken into account in arriving at the postponed gain in respect of the part of the relevant assets disposed of bears to the aggregate of the chargeable gains so taken into account in respect of the relevant assets held immediately before the time of the disposal.

(4) If at any time after the relevant time—

(a) the company ceases to be a 75 per cent. subsidiary of the principal company on the disposal by the principal company of ordinary shares of the company;

(b) after the company has ceased to be such a subsidiary otherwise than on such a disposal, the principal company disposes of such shares; or

(c) the principal company ceases to be resident in the United Kingdom,

there shall be deemed to accrue to the principal company as a chargeable gain on that occasion the whole of the postponed gain so far as not already taken into account under this subsection or subsection (3) above.

(5) If at any time—

(a) the company has allowable losses which have not been allowed as a deduction from chargeable gains; and

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(b) a chargeable gain accrues to the principal company under subsection (3) or (4) above,

then, if and to the extent that the principal company and the company so elect by notice given to the inspector within 2 years after that time, those losses shall be allowed as a deduction from that gain.

(6) In this section—

"deemed disposal" means a disposal which, by virtue of section 185(2) [F98]... is deemed to have been made;

"foreign assets" means any assets of the company which, immediately after the relevant time, are situated outside the United Kingdom and are used in or for the purposes of a trade carried on outside the United Kingdom;

"ordinary share" means a share in the ordinary share capital of the company;

"the relevant time" has the meaning given by section 185(1) [F98]... .

(7) For the purposes of this section a company is a 75 per cent. subsidiary of another company if and so long as not less than 75 per cent. of its ordinary share capital is owned directly by that other company.

Textual Amendments

F97 Words in s. 187(1)(a) repealed (with effect in accordance with s. 251(1)(a)(9) of the amending Act) by Finance Act 1994 (c. 9), s. 251(9)(a), **Sch. 26 Pt. VIII(1)**

F98 Words in s. 187(6) repealed (with effect in accordance with s. 251(1)(a)(9) of the amending Act) by Finance Act 1994 (c. 9), s. 251(9)(b), **Sch. 26 Pt. VIII(1)**

Modifications etc. (not altering text)

C5 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

188 Dual resident companies: deemed disposal of certain assets.

[F99]

. . . . . .

Textual Amendments

F99 S. 188 repealed (retrospective to 30.11.1993) by Finance Act 1994 (c. 9), s. 251(1)(a)(10), **Sch. 26 Pt. 8(1)**

Recovery of tax otherwise than from tax-payer company

189 Capital distribution of chargeable gains: recovery of tax from shareholder.

(1) This section applies where a person who is connected with a company resident in the United Kingdom receives or becomes entitled to receive in respect of shares in the company any capital distribution from the company, other than a capital distribution representing a reduction of capital, and—

(a) the capital so distributed derives from the disposal of assets in respect of which a chargeable gain accrued to the company; or

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(b) the distribution constitutes such a disposal of assets;

and that person is referred to below as "the shareholder".

(2) If the corporation tax assessed on the company for the accounting period in which the chargeable gain accrues included any amount in respect of chargeable gains, and any of the tax assessed on the company for that period is not paid within 6 months from the date determined under subsection (3) below, the shareholder may by an assessment made within 2 years from that date be assessed and charged (in the name of the company) to an amount of that corporation tax—

(a) not exceeding the amount or value of the capital distribution which the shareholder has received or become entitled to receive; and

(b) not exceeding a proportion equal to the shareholder's share of the capital distribution made by the company of corporation tax on the amount of that gain at the rate in force when the gain accrued.

(3) The date referred to in subsection (2) above is whichever is the later of—

(a) the date when the tax becomes due and payable by the company; and

(b) the date when the assessment was made on the company.

(4) Where the shareholder pays any amount of tax under this section, he shall be entitled to recover from the company a sum equal to that amount together with any interest paid by him under section 87A of the Management Act on that amount.

(5) The provisions of this section are without prejudice to any liability of the shareholder in respect of a chargeable gain accruing to him by reference to the capital distribution as constituting a disposal of an interest in shares in the company.

(6) With respect to chargeable gains accruing in accounting periods ending on or before such day as the Treasury may be order appoint this section shall have effect—

(a) with the substitution for the words in subsection (3) after "above" of the words " is the date when the tax becomes payable by the company "; and

(b) with the omission of the words in subsection (4) from "together" to the end of the subsection.

(7) In this section "capital distribution" has the same meaning as in section 122.

Modifications etc. (not altering text)

C5 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

Commencement Information

I2 S. 189: 30.9.1993 appointed for the purposes of s. 189 by S.I. 1992/3066, **art. 2(2)(d)**

[F100 190 Tax recoverable from another group company or controlling director.

(1) This section applies where—

(a) a chargeable gain has accrued to a company ("the taxpayer company"),

(b) the condition in subsection (2) below is met, and

(c) the whole or part of the corporation tax assessed on the company for the accounting period in which the gain accrued ("the relevant accounting

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period") is unpaid at the end of the period of six months after it became payable.

(2) The condition referred to in subsection (1)(b) above is—

(a) that the taxpayer company is resident in the United Kingdom at the time when the gain accrued, or

(b) that the gain forms part of the taxpayer company's chargeable profits for corporation tax purposes by virtue of section **[**F101 10B**]**.

(3) The following persons may, by notice under this section, be required to pay the unpaid tax—

(a) if the taxpayer company was a member of a group at the time when the gain accrued—

(i) a company which was at that time the principal company of the group, and

(ii) any other company which in any part of the period of twelve months ending with that time was a member of that group and owned the asset disposed of, or any part of it, or where that asset is an interest or right in or over another asset, owned either asset or any part of either asset; and

(b) if the gain forms part of the chargeable profits of the taxpayer company for corporation tax purposes by virtue of section **[**F102 10B**]**, any person who is, or during the period of twelve months ending with the time when the gain accrued was, a controlling director of the taxpayer company or of a company which has, or within that period had, control over the taxpayer company.

(4) The Board may serve a notice on a person within subsection (3) above requiring him, within 30 days of the service of the notice, to pay—

(a) the amount which remains unpaid of the corporation tax assessed on the taxpayer company for the relevant accounting period, or

(b) if less, an amount equal to corporation tax on the amount of the chargeable gain at the rate in force when the gain accrued.

(5) The notice must state—

(a) the amount of corporation tax assessed on the taxpayer company for the relevant accounting period that remains unpaid,

(b) the date when it first became payable, and

(c) the amount required to be paid by the person on whom the notice is served.

(6) The notice has effect—

(a) for the purposes of the recovery from that person of the amount required to be paid and of interest on that amount, and

(b) for the purposes of appeals,

as if it were a notice of assessment and that amount were an amount of tax due from that person.

(7) Any notice under this section must be served before the end of the period of three years beginning with the date on which the liability of the taxpayer company to corporation tax for the relevant accounting period is finally determined.

(8) Where the unpaid tax is charged in consequence of a determination under paragraph 36 or 37 of Schedule 18 to the Finance Act 1998 (determination where no return delivered

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or return incomplete), the date mentioned in subsection (7) above shall be taken to be the date on which the determination was made.

(9) Where the unpaid tax is charged in a self-assessment, including a self-assessment that supersedes a determination (see paragraph 40 of Schedule 18 to the Finance Act 1998), the date mentioned in subsection (7) above shall be taken to be the latest of—

(a) the last date on which notice of enquiry may be given into the return containing the self-assessment;

(b) if notice of enquiry is given, 30 days after the enquiry is completed;

(c) if more than one notice of enquiry is given, 30 days after the last notice of completion;

(d) if after such an enquiry the Inland Revenue amend the return, 30 days after notice of the amendment is issued;

(e) if an appeal is brought against such an amendment, 30 days after the appeal is finally determined.

(10) If the unpaid tax is charged in a discovery assessment, the date mentioned in subsection (7) above shall be taken to be—

(a) where there is no appeal against the assessment, the date when the tax becomes due and payable;

(b) where there is such an appeal, the date on which the appeal is finally determined.

(11) A person who has paid an amount in pursuance of a notice under this section may recover that amount from the taxpayer company.

(12) A payment in pursuance of a notice under this section is not allowed as a deduction in computing any income, profits or losses for any tax purposes.

(13) In this section—

"director", in relation to a company, has the meaning given by section 168(8) of the Taxes Act (read with subsection (9) of that section) and includes any person falling within section 417(5) of that Act (read with subsection (6) of that section);

"controlling director", in relation to a company, means a director of the company who has control of it (construing control in accordance with section 416 of the Taxes Act);

"group" and "principal company" have the meaning which would be given by section 170 if in that section for references to 75 per cent. subsidiaries there were substituted references to 51 per cent. subsidiaries.**]**

Textual Amendments

F100 S. 190 substituted for ss. 190, 191 (with effect in accordance with Sch. 29 para. 9(3) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 29 para. 9(1)** (with Sch. 29 paras. 9(4), 46(5))

F101 Word in s. 190(2)(b) substituted (with effect in accordance with s. 155(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 27 para. 2(3)**

F102 Word in s. 190(3)(b) substituted (with effect in accordance with s. 155(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 27 para. 2(3)**

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Modifications etc. (not altering text)

C5 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

Demergers

192 Tax exempt distributions.

(1) This section has effect for facilitating certain transactions whereby trading activities carried on by a single company or group are divided so as to be carried on by 2 or more companies not belonging to the same group or by 2 or more independent groups.

(2) Where a company makes an exempt distribution which falls within section 213(3)(a) of the Taxes Act—

(a) the distribution shall not be a capital distribution for the purposes of section 122; and

(b) sections 126 to 130 shall, with the necessary modifications, apply as if that company and the subsidiary whose shares are transferred were the same company and the distribution were a reorganisation of its share capital.

(3) Subject to subsection (4) below, **[**F103section 179 shall not**]** apply in a case where a company ceases to be a member of a group by reason only of an exempt distribution.

(4) Subsection (3) does not apply if within 5 years after the making of the exempt distribution there is chargeable payment; and the time for making an assessment under section F104... 179 by virtue of this subsection shall not expire before the end of 3 years after the making of the chargeable payment.

(5) In this section—

"chargeable payment" has the meaning given in section 214(2) of the Taxes Act;

"exempt distribution" means a distribution which is exempt by virtue of section 213(2) of that Act; and

"group" means a company which has one or more 75 per cent. subsidiaries together with that or those subsidiaries.

(6) In determining for the purposes of this section whether one company is a 75 per cent. subsidiary of another, the other company shall be treated as not being the owner of—

(a) any share capital which it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade; or

(b) any share capital which it owns indirectly and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt.

Textual Amendments

F103 Words in s. 192(3) substituted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 29 para. 29** (with Sch. 29 para. 46(5))

F104 Words in s. 192(4) repealed (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 40 Pt. II(12)**

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Modifications etc. (not altering text)

C5 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

[F105 Disposals by companies with substantial shareholding

Textual Amendments

F105 S. 192A and cross-heading inserted (with application in accordance with s. 44(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 44(1)**

192A Exemptions for gains or losses on disposal of shares etc

Schedule 7AC (exemptions for disposal of shares etc by companies with substantial shareholding) has effect.**]**

Status:
Point in time view as at 19/07/2007.

Changes to legislation:
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