

Changes to legislation: Taxation of Chargeable Gains Act 1992, SCHEDULE 5AA is up to date with all changes known to be in force on or before 09 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) View outstanding changes

SCHEDULES

[^{F1}SCHEDULE 5AA

MEANING OF “SCHEME OF RECONSTRUCTION”

Textual Amendments

- F1** Sch. 5AA inserted (with effect in accordance with Sch. 9 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 9 para. 3](#)

Introductory

- 1 In section 136 “scheme of reconstruction” means a scheme of merger, division or other restructuring that meets the first and second, and either the third or the fourth, of the following conditions.

First condition: issue of ordinary share capital

- 2 The first condition is that the scheme involves the issue of ordinary share capital of a company (“the successor company”) or of more than one company (“the successor companies”)—
- (a) to holders of ordinary share capital of another company (“the original company”) or, where there are different classes of ordinary share capital of that company, to holders of one or more classes of ordinary share capital of that company (the classes “involved in the scheme of reconstruction”), or
 - (b) to holders of ordinary share capital of more than one other company (“the original companies”) or, where there are different classes of ordinary share capital of one or more of the original company or companies, to holders of ordinary share capital of any of those companies or of one or more classes of ordinary share capital of any of those companies (the classes “involved in the scheme of reconstruction”),
- and does not involve the issue of ordinary share capital of the successor company, or (as the case may be) any of the successor companies, to anyone else.

Second condition: equal entitlement to new shares

- 3 (1) The second condition is that under the scheme the entitlement of any person to acquire ordinary share capital of the successor company or companies by virtue of holding relevant shares, or relevant shares of any class, is the same as that of any other person holding such shares or shares of that class.
- (2) For this purpose “relevant shares” means shares comprised—
- (a) where there is one original company, in the ordinary share capital of that company or, as the case may be, in the ordinary share capital of that company of a class involved in the scheme of reconstruction;

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- (b) where there is more than one original company, in the ordinary share capital of any of those companies or, as the case may be, in the ordinary share capital of any of those companies of a class involved in the scheme of reconstruction.

Third condition: continuity of business

- 4 (1) The third condition is that the effect of the restructuring is—
- (a) where there is one original company, that the business or substantially the whole of the business carried on by the company is carried on—
- (i) by a successor company which is not the original company, or
- (ii) by two or more successor companies (which may include the original company);
- (b) where there is more than one original company, that all or part of the business or businesses carried on by one or more of the original companies is carried on by a different company, and the whole or substantially the whole of the businesses carried on by the original companies are carried on—
- (i) where there is one successor company, by that company (which may be one of the original companies), or
- (ii) where there are two or more successor companies, by those companies (which may be the same as the original companies or include any of those companies).
- (2) The reference in sub-paragraph (1)(a)(ii) or (b)(ii) to the whole or substantially the whole of a business, or businesses, being carried on by two or more companies includes the case where the activities of those companies taken together embrace the whole or substantially the whole of the business, or businesses, in question.
- (3) For the purposes of this paragraph a business carried on by a company that is under the control of another company is treated as carried on by the controlling company as well as by the controlled company.
- [^{F2}Section 1124 of CTA 2010] (meaning of “control”) applies for the purposes of this sub-paragraph.
- (4) For the purposes of this paragraph the holding and management of assets that are retained by the original company, or any of the original companies, for the purpose of making a capital distribution in respect of shares in the company shall be disregarded.

In this sub-paragraph “capital distribution” has the same meaning as in section 122.

Textual Amendments

- F2** Words in Sch. 5AA para. 4(3) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 267\(2\)](#) (with [Sch. 2](#))

Fourth condition: compromise or arrangement with members

- 5 The fourth condition is that—
- (a) the scheme is carried out in pursuance of a compromise or arrangement—
- [^{F3}(i) to which Part 26 [^{F4}or 26A] of the Companies Act 2006 (arrangements and reconstructions) applies,]

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- (ii) under any corresponding provision of the law of a country or territory outside the United Kingdom, and
- (b) no part of the business of the original company, or of any of the original companies, is transferred under the scheme to any other person.

Textual Amendments

- F3** Sch. 5AA para. 5(a)(i) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2008 \(S.I. 2008/954\)](#), arts. 1(1), **17** (with art. 4)
- F4** Words in Sch. 5AA para. 5(a)(i) inserted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), **Sch. 9 para. 14** (with ss. 2(2), 5(2))

Preliminary reorganisation of share capital to be disregarded

- 6 Where a reorganisation of the share capital of the original company, or of any of the original companies, is carried out for the purposes of the scheme of reconstruction, the provisions of the first and second conditions apply in relation to the position after the reorganisation.

Subsequent issue of shares or debentures to be disregarded

- 7 An issue of shares in or debentures of the successor company, or any of the successor companies, after the latest date on which any ordinary share capital of the successor company, or any of them, is issued—
- (a) in consideration of the transfer of any business, or part of a business, under the scheme, or
 - (b) in pursuance of the compromise or arrangement mentioned in paragraph 5(a),
- shall be disregarded for the purposes of the first and second conditions.

Interpretation

- 8 (1) In this Schedule “ordinary share capital” has the meaning given by [F5section 1119 of CTA 2010] and also includes—
- (a) in relation to a unit trust scheme, any rights that are treated by section 99(1) (b) of this Act (application of Act to unit trust schemes) as shares in a company, and
 - (b) in relation to a company that has no share capital, any interests in the company possessed by members of the company.
- (2) Any reference in this Schedule to a reorganisation of a company’s share capital is to a reorganisation within the meaning of section 126.]

Textual Amendments

- F5** Words in Sch. 5AA para. 8(1) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 267(3)** (with Sch. 2)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act applied by [1997 c. 16 Sch. 12 para. 12\(7\)](#)[1314](#)
- Act applied by [2002 c. 23 Sch. 16 para. 48\(1\)\(2\)](#)
- Act construed as one with reg. 37 by [S.I. 2006/575 reg. 37\(2\)](#)
- Act construed as one with reg. 38 by [S.I. 2006/575 reg. 38\(3\)](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 4(10)(11) inserted by [2016 c. 11 s. 15\(4\)](#)
- s. 4(10) words inserted by [2016 c. 24 s. 83\(11\)](#)
- s. 35(3)(d)(xviii) added by [2008 c. 17 Sch. 7 para. 9](#)
- s. 35(3)(d)(xviii) inserted by [2008 c. 18 Sch. 13 para. 46](#)
- s. 35(3)(d)(xviii) repealed by [S.I. 2008/3002 Sch. 1 para. 42](#)[Sch. 3](#) (This amendment comes into force on the day 2008 c. 4, s. 5 comes into force, see art. 1(2). That provision was brought into force on 1.12.2008 by S.I. 2008/3068, art. 2(1)(b))
- s. 104(4)(b)(i) words substituted by S.I. 1989/469, reg. 27(2) (as amended) by [S.I. 1997/1716 reg. 13\(1\)\(b\)](#)
- s. 107(11) words substituted by S.I. 1989/469, reg. 27(2A) (as amended) by [S.I. 1997/1716 reg. 13\(2\)\(b\)](#)
- s. 169S(4A) inserted by [2015 c. 11 s. 43\(2\)](#)
- s. 587B inserted by [2000 c. 17 s. 43\(1\)](#)
- Sch. 5C para. 3(1) modified by [S.I. 2004/2199 reg. 7\(1\)](#)
- Sch. 5C para. 3(6) modified by [S.I. 2004/2199 reg. 7\(2\)](#)
- Sch. 5C para. 5(1) modified by [S.I. 2004/2199 reg. 7\(3\)](#)
- Sch. 5C para. 3 words inserted by [S.I. 2005/3229 reg. 128](#)
- Sch. 5C para. 5 words inserted by [S.I. 2005/3229 reg. 128](#)
- Sch. 5C para. 6 words inserted by [S.I. 2005/3229 reg. 128](#)
- Sch. 5C para. 3(1)(f) words substituted by [2007 c. 3 Sch. 1 para. 347](#)