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Taxation of Chargeable Gains Act 1992

1992 CHAPTER 12

PART V

TRANSFER OF BUSINESS ASSETS[F1, [F1BUSINESS ASSET DISPOSAL RELIEF] AND INVESTORS' RELIEF]

CHAPTER II

GIFTS OF BUSINESS ASSETS

[F1165A Meaning of "holding company", "trading company" and "trading group"

(1) This section has effect for the interpretation of section 165 (and this section).

(2) "Holding company" means a company that has one or more 51% subsidiaries.

(3) "Trading company" means a company carrying on trading activities whose activities do not include to a substantial extent activities other than trading activities.

(4) For the purposes of subsection (3) above "trading activities" means activities carried on by the company—

(a) in the course of, or for the purposes of, a trade being carried on by it,

(b) for the purposes of a trade that it is preparing to carry on,

(c) with a view to its acquiring or starting to carry on a trade, or

(d) with a view to its acquiring a significant interest in the share capital of another company that—

(i) is a trading company or the holding company of a trading group, and

(ii) if the acquiring company is a member of a group of companies, is not a member of that group.

(5) Activities do not qualify as trading activities under subsection (4)(c) or (d) above unless the acquisition is made, or the company starts to carry on the trade, as soon as is reasonably practicable in the circumstances.

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(6) The reference in subsection (4)(d) above to the acquisition of a significant interest in the share capital of another company is to an acquisition of ordinary share capital in the other company—

(a) such as would make that company a 51% subsidiary of the acquiring company, or

(b) such as would give the acquiring company a qualifying shareholding in a joint venture company without making the two companies members of the same group of companies.

(7) For the purpose of determining whether a company which has a qualifying shareholding in a joint venture company is a trading company—

(a) any holding by it of shares in the joint venture company is to be disregarded, and

(b) it is to be treated as carrying on an appropriate proportion of the activities of the joint venture company or, where the joint venture company is the holding company of a trading group, of the activities of that group;

and in paragraph (b) above "appropriate proportion" means a proportion corresponding to the percentage of the ordinary share capital of the joint venture company held by the company.

(8) "Trading group" means a group of companies—

(a) one or more of whose members carry on trading activities, and

(b) the activities of whose members, taken together, do not include to a substantial extent activities other than trading activities.

(9) For the purposes of subsection (8) above "trading activities" means activities carried on by a member of the group—

(a) in the course of, or for the purposes of, a trade being carried on by any member of the group,

(b) for the purposes of a trade that any member of the group is preparing to carry on,

(c) with a view to any member of the group acquiring or starting to carry on a trade, or

(d) with a view to any member of the group acquiring a significant interest in the share capital of another company that—

(i) is a trading company or the holding company of a trading group, and

(ii) is not a member of the same group of companies as the acquiring company.

(10) Activities do not qualify as trading activities under subsection (9)(c) or (d) above unless the acquisition is made, or the group member in question starts to carry on the trade, as soon as is reasonably practicable in the circumstances.

(11) The reference in subsection (9)(d) above to the acquisition of a significant interest in the share capital of another company is to an acquisition of ordinary share capital in the other company—

(a) such as would make that company a member of the same group of companies as the acquiring company, or

(b) such as would give the acquiring company a qualifying shareholding in a joint venture company without making the joint venture company a member of the same group of companies as the acquiring company.

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(12) For the purpose of determining whether a group of companies is a trading group in a case where any one or more members of the group has a qualifying shareholding in a joint venture company which is not a member of the group—

(a) every holding of shares in the joint venture company by a member of the group having a qualifying shareholding in it is to be disregarded, and

(b) each member of the group having such a qualifying shareholding is to be treated as carrying on an appropriate proportion of the activities of the joint venture company or, where the joint venture company is a holding company of a trading group, of the activities of that group;

and in paragraph (b) above "appropriate proportion" means a proportion corresponding to the percentage of the ordinary share capital of the joint venture company held by the member of the group.

(13) For the purposes of this section the activities of the members of a group of companies are to be treated as one business (with the result that activities are disregarded to the extent that they are intra-group activities).

(14) In this section—

"51% subsidiary" has the meaning given by **[**[F2]Chapter 3 of Part 24 of CTA 2010**]**,

"group of companies" means a company which has one or more 51% subsidiaries together with those subsidiaries,

"joint venture company" means a company—

(a) which is a trading company or the holding company of a trading group, and

(b) 75% or more of the ordinary share capital of which (in aggregate) is held by not more than 5 persons (the shareholdings of members of a group of companies being regarded for the purposes of this paragraph as held by a single company),

"ordinary share capital" has the meaning given by section 989 of ITA 2007,

"qualifying shareholding", in relation to a company and a joint venture company, means—

(a) the holding by the company of 10% or more of the ordinary share capital of the joint venture company, or

(b) (where the company is a member of a group of companies) the holding by the company and the other members of the group (between them) of 10% or more of that ordinary share capital, and

"trade" means (subject to section 241(3)) anything which—

(a) is a trade, profession or vocation, within the meaning of the Income Tax Acts, and

(b) is conducted on a commercial basis and with a view to the realisation of profits.**]**

Textual Amendments

F1 S. 165A inserted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 2 para. 34**

F2 Words in s. 165A(14) 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. 241** (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. 42Sch. 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