



Finance Act 2006

2006 CHAPTER 25

PART 3

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 7

CHARGEABLE GAINS

Capital losses

70 Restrictions on companies buying losses or gains

- (1) TCGA 1992 is amended as follows.
- (2) After section 184 insert—

“Restrictions on buying losses or gains etc

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

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- 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 unless the gains accrue to the company on a disposal of a pre-change asset.
- (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 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.

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 unless the loss accrues to the company on a disposal of a pre-change asset.
- (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).

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- (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.

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).

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- (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.

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,

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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.
- (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

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- (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.
- (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—

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- (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.”.
- (3) In Schedule 7A (restriction on set-off of pre-entry losses), in paragraph 1(1) (application of Schedule), at the end insert “, but this Schedule shall have no effect in any case where section 184A (restrictions on buying losses: tax avoidance schemes) has effect in relation to those losses ”.
- (4) Section 177B and Schedule 7AA (restrictions on setting losses against pre-entry gains) shall cease to have effect.
- (5) In section 213 (insurance companies: spreading of gains and losses under section 212)
- (a) in subsection (8H) for “that the net amount is” to the end substitute “ that the net amount would still arise even if losses accruing after the date on which the company or transferee joined the group of companies were disregarded ”, and
 - (b) in subsection (8I) for “paragraph 1” to the end substitute “ section 184C as if those references were contained in that section; and in subsection (8A)(b) above “group” has the same meaning as in that section ”.
- The amendments made by this subsection have effect where the accounting period for which the net amount represents an excess of losses over gains is an accounting period ending on or after 5th December 2005.
- (6) The amendments made by this section, other than subsection (5), have effect for calculating the amount to be included in respect of chargeable gains in a company's total profits for any accounting period ending on or after 5th December 2005.
- (7) But, in respect of any such accounting period, those amendments do not have effect in relation to the deduction of any loss from chargeable gains that accrue on any disposal made before 5th December 2005 unless that loss accrues on a disposal made on or after that date.
- (8) For the purposes of those amendments, it does not matter whether a qualifying change of ownership in relation to a company occurs—
- (a) before 5th December 2005, or
 - (b) on or after that date.
- (9) [^{F1}Subsections (10) to (12) apply] so long as each of the following conditions is met—
- (a) at any time (“the relevant time”) before 5th December 2005 there is a qualifying change of ownership in relation to a company (“the relevant company”) for the purposes of section 184A ^{F2}. . . of TCGA 1992,
 - (b) the change of ownership occurs because the relevant company ceases to be a member of a group of companies at the relevant time (whether or not it also occurs for any other reason),
 - (c) the principal company of that group has control of the relevant company at the relevant time and at [^{F3}immediately afterwards,]

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- [^{F4}(ca) no qualifying change of ownership occurs at any time in relation to the principal company of that group for the purposes of section 184A of TCGA 1992 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 falling within subsection (1)(d) of that section, and]
- (d) ^{F5}
- (e) a qualifying loss for the purposes of section 184A of TCGA 1992 ^{F6} . . . accrues to the relevant company or any other company on a disposal made before 5th December 2005.
- [^{F7}(10) Subsection (2) of that section has effect in relation to that qualifying loss subject to the following modifications.
- (11) That subsection has effect as if there were inserted at the end of it unless the gains accrue to the company on a disposal of a pre-change asset.
- (12) That subsection (modified as mentioned above) has effect as if the reference to a pre-change asset included an asset held before the relevant time by any company—
- (a) which, immediately before that time, was a member of the same group of companies as the relevant company, and
- (b) which, throughout the period beginning with that time and ending immediately after the making of the disposal referred to in that subsection, has remained under the control of the company which was the principal company of that group at the relevant time.
- (13) Expressions which are used in subsections (9) to (12) have the same meaning as in sections 184A and 184C of TCGA 1992.]

Textual Amendments

- F1** Words in s. 70(9) substituted (with effect as mentioned in s. 32(9) of the amending Act) by Finance Act 2007 (c. 11), s. 32(5)(a)
- F2** Words in s. 70(9)(a) repealed (with effect in accordance with s. 32 of the amending Act) by Finance Act 2007 (c. 11), ss. 32(5)(b), 114, {Sch. 27 Pt. 2(4) Note}
- F3** Words in s. 70(9)(c) substituted (with effect as mentioned in s. 32(9) of the amending Act) by Finance Act 2007 (c. 11), s. 32(5)(c)
- F4** S. 70(9)(ca) inserted (with effect as mentioned in s. 32(9) of the amending Act) by Finance Act 2007 (c. 11), s. 32(5)(d)
- F5** S. 70(9)(d) and following word repealed (with effect in accordance with s. 32 of the amending Act) by Finance Act 2007 (c. 11), ss. 32(5)(e), 114, {Sch. 27 Pt. 2(4) Note}
- F6** Words in s. 70(9)(e) repealed (with effect in accordance with s. 32 of the amending Act) by Finance Act 2007 (c. 11), ss. 32(5)(f), 114, {Sch. 27 Pt. 2(4) Note}
- F7** S. 70(10)-(13) substituted (with effect as mentioned in s. 32(9) of the amending Act) for s. 70(10)(11) by Finance Act 2007 (c. 11), s. 32(6)

Changes to legislation:

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