

FINANCE ACT 2009

EXPLANATORY NOTES

INTRODUCTION

Section 31 Schedule 12: Notional Transfers Within a Group

Summary

1. **Section 31** and Schedule 12 provide groups of companies with a simpler procedure to match the chargeable gains or allowable losses that arise on the disposal of chargeable assets when an election is made, removing the need to actually transfer ownership of assets within a group. Currently when an election is made, an asset is deemed to have been transferred from one group company to another before a disposal outside the group. However, an election cannot currently be made in all the circumstances in which gains or losses can arise; for example where there is no disposal to a third party.

Details of the Schedule

2. Paragraph 1 provides that section 171A of the Taxation of Chargeable Gains Act 1992 (TCGA) is replaced with new sections 171A – 171C.
3. New section 171A(1) sets out the three requirements for an election to transfer a chargeable gain or allowable loss between two group companies. The first two requirements are met where a gain or loss accrues to a company at a time when both it and the other company are members of the same group. The third requirement is met if section 171(1) of TCGA would have applied to a disposal of the asset from one to the other immediately prior to the gain or loss accruing. Section 171 of TCGA provides for tax neutrality on the disposal of a chargeable asset from one group company to another. It sets the consideration given for the asset for tax purposes at the amount which would give rise to neither a chargeable gain nor an allowable loss.
4. New section 171A(2) modifies the application of section 171(1A)(b) TCGA in its application for the purposes of the new section 171A (1)(c).
5. Section 171(1A)(b) sets out the condition to be fulfilled by the recipient of an asset on transfer from another company in the same group if no-gain, no-loss treatment is to apply to that transfer. Where the recipient is not resident in the United Kingdom, the condition is that the asset is a chargeable asset in relation to that company. A chargeable asset is one on which any gain from a disposal would be a chargeable gain, and form part of the company's chargeable profits. This requirement cross-refers to section 10B TCGA, which, without the modification provided by new section 171A(2), limits the chargeable profits to gains on assets that are situated in the United Kingdom and used for the purposes of the trade of a permanent establishment.
6. The only condition that is required to be fulfilled by a recipient of the gain or loss to be reallocated to a non-resident group company making an election under new section 171A TCGA is that they are carrying on a trade in the United Kingdom through a permanent establishment.

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which received Royal Assent on 21 July 2009*

7. New sections 171A(4) and (5) set out the form of the election, which may be in relation to only part of the gain or loss. Subsection (4) also sets out the time limit for making the election, which is the second anniversary of the end of the accounting period of the company in which the gain or loss accrued.
8. New section 171A(6) ensures that one or more elections will not be valid if, taking into consideration any earlier elections in respect of the same gain or loss, they seek to reallocate more than the total amount of that gain or loss.
9. New section 171A(7) disapplies new section 171A for chargeable gains or allowable losses deemed to accrue to a company under section 179 of TCGA 1992 when it leaves a group (degrouching charges). This is because section 179A continues to apply to these gains and losses.
10. New section 171B sets out the consequences of the making of an election under new section 171A.
11. New section 171B(2) provides that the gain or loss (or any part of it) is treated as having accrued not to the company making the disposal, but to the other company that is party to the election.
12. New section 171B(3) provides that the reallocated gain or loss is treated as accruing at the time that the gain or loss originally accrued.
13. New sections 171B(4) and (5) apply where the company to which the gain or loss is reallocated is not resident in the UK, but trades in the UK through a permanent establishment. Subsection (4) treats any gain or loss reallocated to that company as accruing in respect of a 'chargeable asset' held by the company. Subsection (5) defines a chargeable asset for these purposes as an asset on which any chargeable gain arising on the disposal of the asset would form part of its chargeable profits for UK corporation tax purposes by virtue of section 10B of TCGA. Together these subsections ensure that any gain or loss remains within the scope of UK corporation tax on chargeable gains.
14. New section 171B(6) provides for any payment made between companies that are party to an election under new section 171A, that is made in connection with the election, to be disregarded for corporation tax purposes, to the extent that the payment does not exceed the amount of the reallocated chargeable gain or loss.
15. New section 171C makes particular provision for elections under new section 171A where a company that is party to such an election is an insurance company.
16. New section 171C(2) relaxes the requirement in new section 171A(1)(c) where the company to which any gain or loss is reallocated is an insurance company. This allows such a company to make an election under new section 171A by disapplying section 440(3) of the Income and Corporation Taxes Act 1988. Section 440(3) provides that section 171 of TCGA does not apply to a transfer of an asset held in a company's long-term insurance fund (L-TIF), or to a company's L-TIF.
17. New section 171C(3) disapplies new section 171C(2) where the company in which the gain originally accrues is an insurance company and where the asset is part of its L-TIF prior to the disposal.
18. New section 171C(4) provides that the effect of the election in cases where a gain or loss is reallocated to a company which is an insurance company is that the gain or loss is treated as arising on an asset that is not part of the company's L-TIF.
19. New subsection 171C(5) ensures that the terms 'insurance company' and 'long-term insurance fund' have the same meaning as in section 431(2) ICTA
20. Paragraph 2 provides the consequential amendment to section 179A(5) of TCGA, using the same approach to limit the amount that can be reallocated by an election under that section as in new section 171A(5).

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21. Paragraph 5 of Schedule 12 provides that changes made by Schedule 12 will have effect in relation to gains or losses accruing on or after the date of Royal Assent.

Background Note

22. The new provisions are intended to reduce compliance costs for groups of companies by providing a simpler and comprehensive means of transferring gains and losses so as to allow full matching of gains and losses that arise within different companies in a group.
23. The existing section 171A of TCGA is less comprehensive. It allows group companies to make an election only where there is a disposal of an asset outside the group. The effect of an election under the current provision is to treat that asset as having been transferred between the companies immediately before the disposal outside the group.