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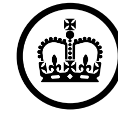
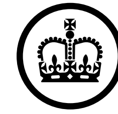

HM Revenue & Customs

Simplification review:

capital gains rules for groups of companies

a summary of consultation responses

December 2010



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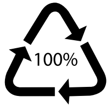

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1 Introduction

1.1 In February 2010 the previous Government published the consultation document: *Simplification review: capital gains rules for groups of companies*. The Government confirmed in the Budget on 22 June 2010 that it would simplify these rules, with legislation in Finance Bill 2011. The Government is committed to simplicity in the tax system, and the capital gains rules for groups of companies are a particularly complex part of the tax legislation that businesses have identified as a priority for simplification.

1.2 This document summarises the responses received to the consultation and sets out the Government's response to these.

1.3 Annex B of this document contains revised draft legislation to simplify the capital gains rules for groups of companies. The Government welcomes further comments on the draft legislation, and also on the draft guidance it will publish on the HMRC website in mid January. Details on how to respond are provided in chapter 4.

2 The consultation

2.1 Following the launch of the Related Companies Simplification Review at the 2007 Pre-Budget Report, the previous Government published an online survey on corporation tax rules for related companies to identify which areas of these rules were possible candidates for simplification. Over 140 responses were received from a range of interested parties, including professional tax advisers and representative groups. In December 2007, the previous Government issued an update on the review, outlining four areas identified as having potential for reform. One of these was the capital gains rules for groups of companies.

2.2 In Finance Act 2008, the previous Government simplified the existing rule for notional transfers within a group of companies. The change allowed the matching of a group's capital gains with its losses in a greater range of circumstances. However, this was only a first step in simplifying the capital gains rules for groups, and discussions continued with representative bodies on other areas identified as priorities for reform.

Purpose of the consultation

2.3 Companies are liable to corporation tax on chargeable gains arising on the disposal of assets. As far as possible, the capital gains rules for groups of companies are intended to recognise that a group of companies operates as a single economic entity. This principle underpins the 'no-gain-no-loss' asset transfer rule,[1] which allows companies within the same corporate group to transfer assets between one another on a tax-neutral basis. This helps minimise the distortion the tax regime makes to companies' economic activities.

2.4 As a result of provisions designed to remove economic distortions and of the interactions between the capital gains rules and other tax rules, the capital gains regime for companies has a necessary degree of complexity. In addition, complexity arises from intricate group ownership structures and from the fact there can be alternative routes for disposing of assets: either through a simple sale of the assets, or through a sale of the shares in a company that owns the assets. While the choice of how to dispose of assets is usually driven purely by commercial reasons, tax considerations can sometimes distort the choice made. The inherent complexity of the regime has provided tax avoidance opportunities, especially in situations involving groups of companies. This, in turn, has led successive governments to introduce various anti-avoidance measures to protect Exchequer revenue.

2.5 Discussions with business representatives identified three areas of the capital gains rules for groups of companies as particularly burdensome. These are:

- the rules governing the use of capital losses following a change in company ownership. A Targeted Anti Avoidance Rule (TAAR) was introduced in 2005 with the aim of preventing 'capital loss buying', i.e. the practice of acquiring a company primarily for the purpose of gaining access to its capital losses, whether these are realised or latent. The proposals in the consultation document related to cases where this TAAR does not apply. The main proposal was to remove restrictions on

[1] Section 171, Taxation of Chargeable Gains Act 1992

place. This removes the requirement to apportion gains and losses on pre-entry assets, and many of the complex rules applying to holdings of shares and securities can be repealed. An additional proposal was for the amended rules to apply in a similar way to assets used for the purposes of trades and other businesses, rather than being limited to trades alone.

- the legislation in respect of value shifting and depreciatory transactions. The main proposal was to replace the complex value shifting rules applying to groups at sections 31-34, Taxation of Chargeable Gains Act 1992 (TCGA) with a simpler, motive-based rule, and to introduce a time limit of 6 years to the depreciatory transactions rules at section 176 TCGA.
- the degrouping charge rules. The degrouping charge ensures that if a company leaves a group, holding an asset acquired through a tax-free transfer from a fellow group member within the last six years, then any gain or loss deferred at the time of the transfer is reinstated. However, consultation identified that in some circumstances the current rules can lead to economic double taxation. One proposal in the February 2010 consultation document was to clarify the existing exception to the degrouping charges for asset transfers between "associated companies" that leave a group together. Another proposal was to ensure any degrouping charge on trade assets can come within the exemption where the substantial shareholdings exemption (SSE) applies, including changes to the SSE rules which will make it easier for groups to reorganize their trading assets prior to a disposal whilst still benefiting from the exemption. A further proposal was to ensure the degrouping charge is generally payable by the vendor group rather than the company which has been sold. In addition, the proposals would provide a further safeguard to ensure that where no exception or exemption applies, the degrouping charge will not result in economic double taxation

The consultation questions

2.6 The consultation document invited responses from interested parties, including representative bodies of companies that would be affected and their tax advisers, on the consultation questions below.

General questions and Impact Assessment

1. Do you agree that the proposed changes would deliver closer alignment between tax and economic outcomes?
2. Do you see any particular technical issues that need to be resolved in any of the draft legislation, that have not yet been addressed?
3. Do you consider the attached draft legislation to be as clear as possible? If not, where could it be made clearer, and how?
4. We would be grateful for any information relating to the administrative savings and/or the reduction in transaction/compliance costs that you would expect to result from this draft legislation.

Capital losses after a change in ownership

5. Given that Government does not believe that a complete repeal of Schedule 7A is a viable option, do stakeholders agree that the new scheme proposed above represents a worthwhile simplification of the rules?

6 Are there other aspects of the rules that you consider could be further simplified whilst retaining an effective means to stream the use of pre-entry losses?

7 Do you agree that the revisions to the rules governing situations where a company undergoes more than one change of ownership provide greater clarity than the present rules?

8 Do you agree that the revisions to the rules governing situations where a company undergoes more than one change of ownership do not create any material change in the current rules? If not, please give details of any changes that you consider arise.

Value shifting and depreciatory transactions

9 Do you consider that the attached draft legislation is effectively targeted against transactions that are designed to produce a tax advantage?

10 Would the attached legislation provide appropriate reassurance for taxpayers undertaking commercial transactions?

11 Are there specific circumstances or examples that you would like HMRC to cover in guidance to show how the legislation applies?

Degrouping charges

12 What benefits or otherwise do you see arising from the proposal to treat most degrouping charges as adjustments to the computation of gains or losses from a share disposal? Where appropriate, please consider any impacts on transactional costs, administrative burdens and tax compliance costs.

13 The proposals include a rule for reallocating degrouping gains and losses between disposals by different companies and between different classes of shares. Do you think this could be simplified? If so, please explain how.

14 Do you agree that the revision to the rules relating to the old 'associated companies' exception provides a clear and unambiguous rule?

15 Are you content that the 'backstop' rule to prevent economic double taxation would be sufficient to address the issue, both from a technical and practical viewpoint?

16 Are there particular examples that you would wish HMRC to address in guidance to demonstrate how the 'backstop' rule would operate?

17 Do you agree that the proposals to repeal section 179A, 179B and Schedule 7B TCGA are appropriate given the scope of the changes elsewhere in these proposals? If not, please say why you believe an alternative course would be better.

3 Responses to the consultation

3.1 A total of 24 responses to the consultation were received, ranging from individual businesses to tax advisers to representative bodies. A summary of the comments received and the Government's response to these is set out below.

General comments

3.2 Respondents were generally supportive of the proposals.

3.3 There was broad agreement with the assessment that an important benefit of the simplification proposals would be to improve certainty for taxpayers, though there would not be a significant change to the administrative burdens involved. Some respondents mentioned that the proposals would achieve improved alignment of tax and economic outcomes.

3.4 Some respondents had technical comments on the draft legislation.

The Government's response

3.5 The Government is committed to simplifying the capital gains rules for groups of companies as far as possible for taxpayers undertaking commercially-driven transactions, consistent with affordability and with preserving the integrity of the regime. The Government notes the positive reception the proposals have received following a full consultation process. The Government will change the rules in Finance Bill 2011 in line with the proposals in the previous consultation document, with some improvements that have been informed by suggestions from interested parties.

3.6 The Government has included a number of technical changes in the revised draft legislation as a result of respondents' comments.

Capital losses after a change in ownership

3.7 A number of respondents would have preferred a total repeal of Schedule 7A. However, most respondents nonetheless regarded the existing proposal as a useful simplification to the rules.

3.8 There were some suggestions for amending the proposal, with the aim of further simplifying the rules. These included only streaming losses that were incurred before the TAAR came into effect, and introducing a de minimis limit, so that for changes in ownership involving capital losses under say £50,000, there would be no streaming.

3.9 Several respondents commented that including trades and businesses in the scope of the proposal was useful. Respondents also commented that the redrafting of the rules applying to successive changes in ownership was a welcome clarification.

3.10 One respondent suggested that following the changes to the rules on the transfer of gains and losses within a group made by Finance Act 2009, a further simplification could be made to relax the rules on the use of pre-entry losses against gains on assets used in a continuing business.

The Government's response

3.11 The Government notes that a number of respondents would have preferred a total repeal of Schedule 7A, but this would be unaffordable.

3.12 The Government does not consider that it would be practical or effective to apply streaming solely to losses incurred before the TAARs were introduced.

3.13 The Government is not persuaded that a de minimis limit would be useful simplification in this context. Both this and the previous suggestion would introduce new cliff-edge effects to a rule that is otherwise fair and clear.

3.14 The Government aims to remove unnecessary restrictions created by the tax system on how businesses organise their affairs. In accordance with this aim, the Government has made changes to the draft legislation in response to the suggestion at paragraph 3.10 above. Where a group acquires a company with pre-entry losses those losses will be available to set against any gains arising on any assets used for the purposes of the business which that company carried on before the change of ownership, so long as the acquiring group continues to carry on that business without a major change. It will no longer be a requirement that the same company carries on the business. This will allow the acquiring company to transfer the business to another group company without losing access to relief for pre-entry losses.

Value shifting and depreciatory transactions

3.15 Respondents generally regarded the proposals as better targeted against tax avoidance than the existing rules, though there were concerns that some dividend payments made before the sale of a company as a result of commercially-motivated transactions could still be caught.

3.16 Several respondents commented that the proposals would provide taxpayers with more certainty when undertaking a number of common transactions.

The Government's response

3.17 The Government has amended the draft legislation to ensure that the new rules will be better targeted. In particular, the revised draft legislation includes a carve-out for payments of dividends made before the sale of a company. The payment of a dividend before sale will not, of itself, give rise to an adjustment under the new rule.

3.18 The definition of tax advantage is amended to improve targeting the measure in line with some comments.

3.19 The matters to be taken into account in determining the just and reasonable amount of an adjustment under the new provision are widened to include other corporation tax charges or reliefs that might arise as a consequence of the arrangements in line with some of the responses received.

Degrouping charges

3.20 In general, respondents regarded the design of the proposals as simplifying the regime effectively while also removing economic double taxation.

3.21 Some respondents suggested that the rules could be made clearer in how they interact with other parts of the legislation on capital gains for groups of companies, such as the rules at section 139 TCGA that deal with demergers or reconstructions involving the transfer of a subsidiary for no consideration.

3.22 Some respondents identified problems in the draft legislation with the definition of "chargeable asset" and disposals by non-resident companies. For example, the new provisions

did not give the result they expected in relation to a disposal of shares by a non-UK resident company where that disposal would have benefited from the substantial shareholdings exemption if it had been a UK resident.

3.23 One response suggested a change was needed to the commencement provisions in the draft legislation so that they applied in the expected way in all cases.

3.24 All respondents felt that the proposal to ensure any degrouping charge on trade assets can come within the exemption where the SSE applies was to be welcomed, although some suggested that this should be extended to include assets within the post-2002 intellectual property (IP) regime. One respondent suggested that a similar change could be made where a chargeable gain is deferred where trade assets are transferred from a foreign branch to a non-resident company.

The Government's response

3.25 The Government notes that most respondents supported the proposal as an important simplification to the regime.

3.26 The Government does not currently intend to extend the degrouping proposal beyond the capital gains regime for companies, which would be a separate (but related) area of work. However, the Government is aware that this is a potential issue for future simplification work.

3.27 Separate to these simplification proposals, the Government is looking to reform the taxation of foreign branches of UK resident companies.[1] The Government does not propose to make changes to the tax provisions affecting the transfers of assets of a foreign branch of a UK resident company outside of that project.

3.28 The Government has made a small change to the draft legislation to make it clear that where consideration for a disposal of shares is deemed to be increased under section 179 (3C) of the revised degrouping rules, that amount does not constitute consideration for the purposes of the reconstruction reliefs available under section 139 TCGA.

3.29 Changes have been made to the way that the legislation deals with disposals by non-resident group companies to address the technical issues mentioned at paragraph 3.22 above, and to the drafting of the commencement provisions so that they apply appropriately in all cases.

3.30 A small number of other drafting changes to improve the clarity of the legislation have been made in response to comments received in the consultation responses.

[1] The Government's proposals for reform of the taxation of foreign branches can be found at http://www.hm-treasury.gov.uk/consult_taxation_of_foreign_branches.htm

4 Next steps

4.1 As announced at Budget 2010, legislation will be introduced in Finance Bill 2011 to simplify the capital gains rules for groups of companies.

4.2 The Government welcomes comments on the draft legislation at Annex B (and included in the draft Finance Bill). Responses should be sent to:

The Related Companies Simplification Review Team
Room 2/E1
HM Treasury
1 Horse Guards Road
London, SW1A 2HQ

Alternatively, please email: relatedcompanies.simplification@hmtreasury.gsi.gov.uk

Comments should be received by 22 February 2011.

4.3 The Government has delivered the priorities identified by stakeholders during the scoping stage of the Simplification Review in 2007 and discussions over the past three years. It will now formally close this strand of the Related Companies Simplification Review but will continue to keep the capital gains rules for groups of companies under review should further reforms be necessary in the future.

A List of respondents

A.1 The following 22 companies and representative bodies submitted written responses, in addition to 2 responses from individuals:

Association of Chartered Certified Accountants

AstraZeneca

BP

British Bankers' Association

Chartered Institute of Taxation

Confederation of British Industry

Deloitte

Ernst & Young

Field Fisher Waterhouse

Institute of Chartered Accountants in England and Wales

KPMG

The Law Society

The Law Society of Scotland

Linklaters

Lloyds Banking Group

Mazars

PKF

Powrie Appleby

PriceWaterhouse Coopers

Rolls Royce

RBS

Slaughter and May

B Draft legislation

B.1 Below is the revised draft legislation, together with draft Explanatory Notes, on which the Government welcomes any comments from interested parties.

B.2 The Government will publish draft guidance for the new legislation on the HMRC website in mid January.

SCHEDULE 1

Section 1

CHARGEABLE GAINS: PRE-ENTRY LOSSES

TCGA 1992

1 In section 177A of TCGA 1992 (restriction on set-off of pre-entry losses), omit "and losses accruing on assets held by any company at such a time".

2 Schedule 7A to that Act (restriction on set-off of pre-entry losses) is amended as follows.

3 (1) Paragraph 1 (application and construction of Schedule) is amended as follows.

(2) In sub-paragraph (1) for "is or has been" substitute "becomes".

(3) For sub-paragraph (2) substitute—

"(2) In this Schedule "pre-entry loss", in relation to any company, means any allowable loss that accrued to that company at a time before it became a member of the relevant group."

(4) Omit sub-paragraphs (3), (3A), (4) and (5).

(5) In sub-paragraph (6) for "Subject to" to "if" substitute "If".

(6) Omit sub-paragraph (8).

4 Omit paragraphs 2 to 5 (determination of pre-entry proportion of losses on pre-entry assets).

5 (1) Paragraph 6 (restrictions on the deduction of pre-entry losses) is amended as follows.

(2) In sub-paragraph (2)—
(a) omit paragraph (a) (and the "and" after it), and
(b) in paragraph (b), omit "in any other case".

(3) In sub-paragraph (3)—
(a) omit paragraph (a) (and the "and" after it), and
(b) in paragraph (b), omit "in the case of an election under sub-paragraph (2)(b) above,".

6 (1) Paragraph 7 (gains from which pre-entry losses are to be deductible) is amended as follows.

(2) In sub-paragraph (1), for paragraph (c) substitute—
"(c) on the disposal of any asset in respect of which the conditions in sub-paragraph (1A) are met."

(3) After that sub-paragraph insert—

"(1A) The conditions referred to in sub-paragraph (1)(c) are—

(a) that the asset was acquired, on or after the entry date, by—

(i) the company to which the pre-entry loss accrued ("company A"), or

(ii) a company which, at the time of the acquisition, was a group company of company A,

from a person who at the time of the acquisition was not a group company of company A, and

(b) that the asset has not, since its acquisition from that person, been used or held for any purposes other than those of a trade or business which—

(i) was being carried on by company A immediately before the entry date, and

(ii) continued until the disposal to be carried on by company A or a company which, when it carried on the trade or business, was a group company of company A.

(1B) For the purposes of sub-paragraph (1A), a company is a "group company of company A" at any time when it is a member of a group of companies of which company A is also a member.

(1C) Where a company, having become a member of the relevant group, subsequently becomes a member of another group ("the new group")—

(a) sub-paragraph (1) continues to have effect, in relation to any loss which accrued to the company before it became a member of the relevant group, by reference to the date on which it became such a member, and

(b) accordingly, that sub-paragraph does not apply separately in relation to the loss by reason of it also having accrued to the company before it became a member of the new group."

(4) Omit sub-paragraph (2),

(5) In sub-paragraph (3)—

(a) omit ", without prejudice to paragraph 9 below",

(b) omit paragraph (b), and

(c) in paragraph (c), "for sub-paragraphs (1)(c) and (2)(c)" substitute "sub-paragraph (1A)".

(6) For sub-paragraph (4) substitute—

"(4) Sub-paragraphs (4A) and (4B) apply for determining for the purposes of this paragraph whether an asset on the disposal of which a chargeable gain accrues was an asset held by a company immediately before the entry date (a "pre-entry asset").

(4A) Except as provided by subsection (4B), an asset is not a pre-entry asset if—

(a) the company which held the asset at the entry date is not the company which makes the disposal, and

(b) since the entry date that asset has been disposed of otherwise than by a disposal to which section 171 applies.

(4B) Without prejudice to sub-paragraph (4C), where, on a disposal to which section 171 does not apply—

(a) an asset would cease to be a pre-entry asset by virtue of sub-paragraph (4A), but

(b) the company making the disposal retains an interest in or over the asset in question,

that interest is a pre-entry asset.

(4C) For the purposes of this paragraph—

(a) an asset acquired or held by a company at any time and an asset held at a later time by that company, or by any company which is or has been a member of the same group of companies as that company, is to be treated as the same asset if the value of the second asset is derived in whole or in part from the first asset, and

(b) if—

(i) any asset is treated (whether by virtue of paragraph (a) or otherwise) as the same as an asset held by a company at a later time, and

(ii) the first asset would have been a pre-entry asset in relation to that company,

the second asset is also to be treated as a pre-entry asset in relation to that company;

and paragraph (a) applies, in particular, where the second asset is a freehold and the first asset is a leasehold the lessee of which acquires the reversion."

(7) In sub-paragraph (5) omit "or (2)" (in both places).

(8) In sub-paragraph (6) omit "or (2)".

7 (1) Paragraph 8 (change of a company's nature) is amended as follows.

(2) In sub-paragraph (1)—

(a) in paragraph (a) for "carried on by that company" substitute "which was carried on by that company immediately before it became a member of that group",

(b) after "trade" (in each place) insert "or business", and

(c) for "paragraph 7(1)(c) and (2)(c)" substitute "paragraph 7(1A)".

(3) For sub-paragraph (2) substitute—

"(2) In sub-paragraph (1) "a major change in the nature or conduct of a trade or business" includes—

(a) a major change in the type of property dealt in, or services or facilities provided, in the trade or business,

(b) a major change in customers, markets or outlets of the trade or business, or

(c) in the case of a company with investment business (within the meaning of section 1218 of CTA 2009), a major change in the nature of the investments held;

and this paragraph applies even if the change is the result of a gradual process which began outside the period of three years mentioned in sub-paragraph (1)(a)."

8 Omit paragraph 9 (identification of "the relevant group" and application of Schedule to every connected group).

9 In paragraph 11 (continuity provisions), omit sub-paragraph (3)(b) (and the "and" before it).

Consequential provision

10 Omit the following provisions (which relate to the provisions repealed by paragraphs 1 to 9)—
(a) in FA 1994, sections 93(8) to (10) and 94;
(b) in FA 1998, section 138;
(c) in FA 2000, in Schedule 29, paragraph 7(2) to (5);
(d) in F(No 2)A 2005, section 65(2), (3) and (5).

Commencement

11 (1) The amendments made by this Part of this Schedule have effect on and after commencement in relation to the deduction of any pre-entry loss within paragraph 1(2)(a) of Schedule 7A to TCGA 1992 (as amended by this Part) regardless of—
(a) whether the loss accrued before or on or after commencement, and
(b) whether the company which accrued the loss became a member of the relevant group (within the meaning of that Schedule) before or on or after commencement.

(2) In this paragraph "commencement" means the day on which this Act is passed.

Transitional provision

12 (1) Sub-paragraph (2) applies where, immediately before commencement, Schedule 7A to TCGA 1992 had effect, in the case of a company which is or has been a member of a group of companies ("the relevant group") in relation to a loss of that company within paragraph 1(2)(b) of that Schedule (pre-entry proportion of an allowable loss that has accrued to a company on the disposal of a pre-entry asset).

(2) On and after commencement that loss is to be treated, for the purposes of Schedule 7A to TCGA 1992, as if it were a pre-entry loss within the meaning of paragraph 1(2) of that Schedule (as substituted by paragraph 3 of this Schedule) which accrued to that company immediately before it became a member of the relevant group.

(3) In this paragraph "commencement" means the day on which this Act is passed.

CHARGEABLE GAINS: PRE-ENTRY LOSSES

SUMMARY

1. This clause and Schedule simplify the current rules that apply to restrict the circumstances in which capital losses of a company that joins a group can be set against gains. In particular, the use of losses that arise after a company joins a group will no longer be restricted. Losses that are restricted may be used against gains arising on assets used in the same business that the company conducted before joining the group rather than, as now, only against gains on assets used in the same trade.

DETAILS OF THE SCHEDULE

2. Paragraph 3 amends the definition of a "pre-entry loss" for the purposes of Schedule 7A to the Taxation of Chargeable Gains Act 1992 (TCGA) so that it only applies to the losses of a company that accrue before it becomes a member of a group.

3. Paragraphs 3 and 4 remove from Schedule 7A all of those parts that restrict the capital losses of a company that accrue after it becomes a member of a group.

4. Paragraph 5 amends paragraph 6(2) of Schedule 7A. This provides a procedure by which, in certain circumstances, a company can elect whether it is restricted "pre-entry losses" or other losses have been allowed against gains. The change reflects the more limited circumstances in which a loss may be restricted.

5. Paragraph 6(2) and (3) extend the circumstances in which a restricted loss may be used to include setting off against gains arising on assets used in any trade or business that was carried on by the company before it joined the group. After the company joins the group, it is not necessary that the trade or business continues to be carried on by that company; it may be carried on by any company within the same group as the company that incurred the loss. A new paragraph 7(1A) is inserted into Schedule 7A that sets out the conditions to be met. New paragraph 7(1B) provides a definition of "group company" for this purpose.

6. Paragraph 6(3) also inserts into Schedule 7A a new paragraph 7(1C) which sets out clearly the rule that once a loss has become subject to restriction under the Schedule then the same restriction continues to apply should the company subsequently join another group.

7. Paragraph 6(6) amends paragraph 7 of Schedule 7A to set out a definition of "pre-entry asset", the gains on which may be have restricted losses deducted. The definition previously depended on the rules for restricting losses that accrue after the company join the group, which have been repealed.

8. Paragraph 7 amends paragraph 8 of Schedule 7A which applies to the use of restricted losses where there has been a major change in the activity of a company after it joins a group. The changes take account of the extension of the use of restricted losses to gains on assets used for a continuing business, rather than just a continuing trade.

9. Paragraph 11 sets out the commencement provision. The new rules apply to the deduction on or after the day that the Finance Bill receives Royal Assent of any loss that has accrued before a company joined a group.

10. Paragraph 12 is a transitional provision. Where a loss on the disposal of an asset after a company joined a group is subject to restriction under the current rule, then it will be treated as one that arose before the company joined the group for the purposes of the amended rules.

BACKGROUND NOTE

11. The changes introduced by this clause follow extensive consultation by HM Treasury and HM Revenue & Customs aimed at simplifying the group aspects of the corporation tax chargeable gains regime.

12. The revisions to Schedule 7A to TCGA will reduce compliance costs by simplifying the rules that apply to restrict the use of losses when a company joins a group.

13. The amended rules will apply a restriction only to losses that have been realised before the company joins the group and will also allow restricted losses to be used against gains in a continuing business rather than only against those in a continuing trade.

14. The existing scope of the restrictions is no longer required because the tax motivated acquisition of companies with losses is addressed by a targeted anti-avoidance rule at section 184A of TCGA.

15. If you have any questions about this change or comments on the legislation, please contact Philip Donlan on 020 7147 2633 (email: philip.donlan@hmrc.gsi.gov.uk) or Dipti Shah on 020 7147 2349 (email: dipti.shah1@hmrc.gsi.gov.uk).

SCHEDULE 1 Section 1

CHARGEABLE GAINS: VALUE SHIFTING

1 In section 30 of TCGA 1992 (tax-free benefits)—

(a) in subsection (1)(a) omit "or a relevant asset",

(b) for subsection (2) substitute—

"(2) But, for the purposes of corporation tax, this section does not have effect if the disposal of the asset is a disposal by a company of shares in, or securities of, another company (as to which see section 31).", and

(c) omit subsection (8).

2 For sections 31 to 34 of TCGA 1992 (which make provision about disposals by companies of shares in or securities of other companies) substitute—

"31 Disposal of shares or securities by a company

(1) For the purposes of corporation tax, subsection (2) has effect as respects the disposal by a company ("the disposing company") of shares in, or securities of, another company if—

(a) arrangements have been made whereby the value of those shares or securities, or any relevant asset, is materially reduced,

(b) the main purpose, or one of the main purposes of the arrangements is to obtain a tax advantage, and

(c) the arrangements do not consist solely of the making of an exempt distribution.

(2) Any allowable loss or chargeable gain accruing on the disposal is to be calculated as if the consideration for the disposal were increased by such amount as is just and reasonable having regard to—

(a) the arrangements, and

(b) any charge to, or relief from, corporation tax that, in the absence of this section, would arise in consequence of the disposal or the arrangements.

(3) For the purposes of subsection (1)—

(a) an asset is a relevant asset if, at the time of the disposal, it is owned by a company which is a member of the same group as the disposing company, and

(b) it does not matter whether the tax advantage is obtained for the disposing company or any other person.

(4) In relation to a case in which the disposal of the shares or securities precedes their acquisition, the reference in subsection (1)(a) to a reduction is to be read as including a reference to an increase.

(5) Where, but for arrangements to which subsection (6) applies, a transaction would, by virtue of section 29(2), be treated as a disposal

of shares by a company, that transaction is to be treated as if it were, by virtue of section 29(2), a disposal of those shares.

(6) The arrangements to which this subsection applies are arrangements—

(a) whereby the value of the shares or securities is materially reduced, and

(b) the main purpose, or one of the main purposes of which is to obtain a tax advantage (whether for the company or any other person).

(7) In this section—

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

"exempt distribution" means a distribution which—

(a) for the purposes of section 931D of CTA 2009 (exemption from charge to tax: distributions received by companies that are not small), falls within an exempt class by virtue of section 931H of that Act (dividends derived from transactions not designed to reduce tax), or

(b) would be within paragraph (a) but for the recipient being a small company (within the meaning of section 931S of that Act) in the accounting period of the recipient in which the distribution was received;

"group" is to be construed in accordance with section 170;

"securities" has the same meaning as in section 132;

"tax advantage" means the avoidance of a liability to corporation tax in respect of chargeable gains."

3 In section 176 of TCGA (depreciatory transactions within a group), in subsection (1) for "on or after 31st March 1982" substitute "within the period of 6 years ending with the disposal".

4 In section 179 of TCGA (company ceasing to be member of group), in subsection (9)(b), after "section 30" insert "or 31".

5 (1) The amendments made by paragraphs 1 to 3 have effect in relation to disposals of shares or securities by companies made on or after the day on which this Act is passed ("the commencement day").

(2) But nothing in paragraph 1 or 2 prevents section 31A of TCGA 1992 (asset-holding company leaving group), as it had effect immediately before the commencement day, continuing to have effect on or after that day in relation to cases where the section 30 disposal to which that section refers occurred before that day.

(3) The amendment made by paragraph 4 has effect in relation to disposals of shares or securities treated under section 179 as taking place on or after the commencement day.

(4) In this paragraph "securities" has the same meaning as in section 132 of TCGA 1992.

CHARGEABLE GAINS: VALUE SHIFTING

SUMMARY

1. This clause and Schedule simplify the current rules that apply where the capital gains proceeds on the disposal are reduced because the value of an asset has been reduced. The complex rules that apply in following transactions involving companies are replaced by a new targeted anti-avoidance rule that applies to disposals of shares or securities by companies on or after the passing of the Act. Where the rule does apply, it acts to adjust the disposal consideration to counter any tax advantage of the transactions.

DETAILS OF THE SCHEDULE

2. Paragraph 1 amends the current value shifting rule in section 30 of the Taxation of Chargeable Gains Act 1992 (TCGA) to remove the parts that relate to transactions within groups and make its operation subject to section 31 onwards in relation to a disposal by a company of shares in another company. As a result, section 30 will no longer apply to such a disposal for the purposes of corporation tax.

3. Paragraph 2 removes the existing rules that modify section 30 at sections 31 to 34 and replaces them with a new section 31 of TCGA. This is a self contained rule applying to disposals of shares or securities for the purposes of corporation tax.

4. New section 31(1) applies the rule where arrangements have been made that have reduced the value of shares or securities and the purpose of those arrangements was to obtain a tax advantage. It also applies where it is the value of a "relevant asset" that has been reduced. The rule does not apply where the arrangements consist solely of making an "exempt distribution".

5. New section 31(2) provides for the consideration received on a disposal to be adjusted by an amount that is just and reasonable in the light of the arrangements and any charge to or relief from corporation tax arises as a consequence of the arrangements.

6. New section 31(3) defines a "relevant asset" and ensures that the rule applies where the tax advantage is obtained by any person.

7. New section 31(4) modifies the rule in the case where the disposal of shares or securities occurs before their acquisition so as to apply where their value is increased.

8. New section 31(5) clarifies the interaction of the rule with section 29 of TCGA to ensure that a capital gains disposal will result where shares are issued by a company whose value has previously been reduced by arrangements within the scope of this subsection.

9. New section 31(6) sets out the arrangements within the scope of new section 31(5).

10. New section 31(7) provides definitions of "arrangement", "exempt distribution", "group", "securities" and "tax advantage" for the purposes of the section.

11. Paragraph 3 of the Schedule introduces a time limit into the depreciatory transaction rule in section 176 of TCGA. An adjustment under that section may be made where a disposal takes place up to six years following a depreciatory transaction.

12. Paragraph 4 amends the degrouping charge rules in Section 179 TCGA to allow such a charge to be adjusted by this new rule.

13. Paragraph 5 sets out the commencement provision. The changes will apply to disposals made on or after the date that Finance Bill 2011 receives Royal Assent including deemed disposals resulting from the degrouping charge in section 179 of TCGA. The current section 31A has the effect of applying Section 30 to create a separate charge some time after a disposal of shares and will continue to apply in the case of disposals that took place before Royal Assent.

BACKGROUND NOTE

14. The changes introduced by this clause follow extensive consultation by HM Treasury and HM Revenue & Customs aimed at simplifying the group aspects of the corporation tax chargeable gains regime. The existing values shifting rules as they apply to groups of companies were identified as being particularly complex and uncertain in effect, leading to additional compliance costs.

15. The revised legislation will reduce compliance costs for companies by simplifying the rules that apply to adjust disposal consideration where the value of shares or securities has been reduced.

16. The complex mechanical rules that currently apply to restrict the operation of section 30 of TCGA will be replaced by a simple rule targeting tax motivated transactions.

17. If you have any questions about this change or comments on the legislation, please contact Philip Donlan on 020 7147 2633 (email: philip.donlan@hmrc.gsi.gov.uk) or Dipti Shah on 020 7147 2349 (email: dipti.shah1@hmrc.gsi.gov.uk).

SCHEDULE 1

Section 1

CHARGEABLE GAINS: COMPANY CEASING TO BE MEMBER OF GROUP

Degrouping

1 In section 139 of TCGA 1992 (reconstruction involving transfer of business), after subsection (1A) insert—

"(1B) For the purposes of subsection (1)(c), the first mentioned company is not to be regarded as receiving any part of the consideration for the transfer by reason only of that consideration being treated as increased under section 179(3C)."

2 In section 171A of TCGA 1992 (election to reallocate gain or loss to another member of the group), omit subsection (7).

3 (1) Section 179 of TCGA 1992 (company ceasing to be member of group) is amended as follows.

(2) In subsection (1)(a) for "company B is a member of a group" substitute "company A and company B are members of the same group".

(3) In subsection (1A) omit the words from "For this purpose" to the end.

(4) For subsection (2) substitute—

"(2) Where 2 companies cease to be members of the group at the same time, subsection (1) does not have effect as respects the acquisition of an asset by one of the companies from the other if condition A or B is met.

(2ZA) Condition A is that the companies—

(a) are both 75 per cent subsidiaries and effective 51 per cent subsidiaries of another company on the date of the acquisition, and

(b) remain both 75 per cent subsidiaries and effective 51 per cent subsidiaries of that other company until immediately after they cease to be members of the group.

(2ZB) Condition B is that one of the companies—

(a) is both a 75 per cent subsidiary and an effective 51 per cent subsidiary of the other on the date of the acquisition, and

(b) remains both a 75 per cent subsidiary and an effective 51 per cent subsidiary of the other until immediately after the companies cease to be members of the group."

(5) For subsection (2A)(a) substitute—

"(a) a company ("company A") acquired an asset from another company ("company B") at a time when both company A and company B were members of the same group ("the first group"),

(aa) company A has ceased to be a member of the first group,”.

(6) After subsection (3) insert—

“(3A) Any chargeable gain or allowable loss which would otherwise accrue to company A on the sale referred to in subsection (3) does not so accrue if—

(a) company A ceases to be a member of the group in consequence of—

(i) a disposal of shares in company A or another member of the group made by a member of the group, or

(ii) two or more such disposals, and

(b) either—

(i) subsection (3B) applies to the disposal or, if there is more than one disposal, to at least one of them, or

(ii) sub-paragraph (i) does not apply but had subsection (3B) applied to the disposal or, if there is more than one disposal, to each of them, any gain arising on the disposal or disposals would not have been a chargeable gain by virtue of Schedule 7AC.

(3B) This subsection applies to a disposal of shares if—

(a) the company making the disposal is resident in the United Kingdom at the time of the disposal,

(b) the shares are chargeable assets in relation to that company immediately before that time, or

(c) any part of the chargeable gain or allowable loss accruing on the disposal is treated as a gain or loss accruing to a person by virtue of section 13(2) (attribution of gains to members of non-resident companies).

In this section “group disposal” means a disposal within subsection (3A)(a) to which this subsection applies.

(3C) If subsection (3A) applies, any chargeable gain or allowable loss accruing to a company (“the transferor company”) on a group disposal is to be calculated—

(a) where a chargeable gain would accrue to company A in the absence of subsection (3A), as if the amount of the consideration for the group disposal were increased by the amount of the gain, and

(b) where an allowable loss would accrue to company A in the absence of subsection (3A), as if an amount equal to the amount of the loss were a sum allowable under section 38 as a deduction in the computation of the gain or loss accruing on the group disposal.

(3D) If there is more than one group disposal, the references in subsection (3C) to the amount of the gain or loss are to be read, in relation to each disposal, as references to—

(a) such proportion of that amount as the transferor companies in relation to the group disposals jointly elect as the appropriate proportion in relation to the disposal in question, or

(b) where no election is made, the proportion of that amount attributable to that disposal if that amount is divided equally between the group disposals.

(3E) An election under subsection (3D) must—

(a) specify the appropriate proportion in relation to each group disposal, and

(b) be made, by notice to an officer of Revenue and Customs, no later than 2 years after the end of the first accounting period of a company in which any chargeable gain or allowable loss on a group disposal accrues.

(3F) If a group disposal by a company consists of shares of more than one class, then, for the purposes of subsection (3C), that company may apportion any increase or deduction to be made between the classes of shares in such manner as it considers appropriate."

(7) For subsection (5) substitute—

"(5) Subsections (6) to (8) apply where—

(a) in the absence of subsection (6), company A would be treated by virtue of subsection (3) as selling an asset at any time, by reason of ceasing to be a member of the group, and

(b) company A ceases to be a member of the group by reason only of the fact that the principal company of that group becomes a member of another group."

(8) In subsection (6)—

(a) for "The company" to "but" substitute "Subsection (3) does not apply to treat company A as selling the asset at that time; but", and

(b) for "the company in question" (in each place) substitute "company A".

(9) In subsection (7) for "the company" (in both places) substitute "company A".

(10) After that subsection insert—

"(7A) Any chargeable gain or allowable loss which would otherwise accrue to company A on the sale referred to in subsection (6) does not so accrue if—

(a) company A ceases at the relevant time to satisfy the conditions in subsection (7) in consequence of—

(i) a disposal of shares in company A, or another member of the other group mentioned in subsection (5)(b), made by a member of that other group, or

(ii) two or more such disposals, and

(b) either—

(i) subsection (3B) applies to the disposal or, if there is more than one disposal, to at least one of them, or

(ii) sub-paragraph (i) does not apply but had subsection (3B) applied to the disposal or, if there is more than one disposal, to each of them, any gain arising on the disposal or disposals would not have been a chargeable gain by virtue of Schedule 7AC.

(7B) Where subsection (7A) applies, subsections (3C) to (3F) apply to the calculation of any chargeable gain or allowable loss accruing on a disposal within subsection (7A)(a) to which subsection (3B) applies (a "relevant disposal") with the following modifications—

(a) in subsections (3C) to (3F) for the references to a group disposal substitute references to a relevant disposal, and

(b) in subsection (3C) for the references to subsection (3A) substitute references to subsection (7A)."

(11) In subsection (8) for the words from "the company" to the end substitute "company A on the sale referred to in subsection (6) is to be treated as accruing immediately before the relevant time."

(12) In subsection (10), for paragraph (a) substitute—

"(a) 2 companies are associated with each other if one is a 75 per cent subsidiary of the other or both are 75 per cent subsidiaries of another company."

(13) After that subsection insert—

"(10A) For the purposes of this section an asset is a "chargeable asset" in relation to a company at any time if any gain accruing to the company on a disposal of the asset by the company at that time—

(a) would be a chargeable gain and would by virtue of section 10B form part of its chargeable profits for corporation tax purposes, or

(b) would, but for Schedule 7AC (exemptions for disposals by companies with substantial shareholdings), be within paragraph (a)."

4 After section 179 of TCGA 1992 insert—

"179ZA Claim for adjustment of calculations under section 179

(1) This section applies where—

(a) a gain accrues to a company ("company A") on a sale referred to in subsection (3) or (6) of section 179, or

(b) a gain would so accrue but for subsection (3A) or (7A) of that section.

(2) If subsection (3C) of that section applies in relation to one or more disposals of shares—

(a) the company making the disposal, or

(b) if there is more than one disposal, the companies making those disposals acting jointly,

may make a claim for the amount of the gain to be treated for the purposes of that subsection as reduced by an amount specified in the claim.

(3) In any other case, company A may make a claim for the amount of the gain to be treated for all purposes of this Act as reduced by an amount specified in the claim.

(4) Where a claim is made under subsection (2) or (3), the gain must be treated, for the purposes mentioned in the subsection in question, as reduced by such amount (if any) as is just and reasonable having regard to the matters mentioned in subsection (5).

(5) Those matters are—

(a) the amount of share capital of company A or any associated company, and

(b) any transaction as a direct or indirect result of which company A or any associated company acquired the asset to which the gain relates.

(6) Where under this section the gain accruing to company A on a sale referred to in subsection (3) or (6) of section 179 is treated as reduced by an amount ("the permitted deduction"), the subsection in question has effect, so far as it provides for the immediate reacquisition of the asset by company A, as if the reference to market value of the asset were to its market value less the permitted deduction."

5 In TCGA 1992, omit—

(a) section 179A (reallocation within group of gain or loss accruing under section 179),

(b) section 179B (roll-over of degrouping charge on business assets), and

(c) Schedule 7AB (roll-over of degrouping charge: modification of enactments).

Substantial shareholding exemption

6 (1) Schedule 7AC to TCGA 1992 (exemptions for disposals by companies with substantial shareholdings) is amended as follows.

(2) After paragraph 15 insert—

"Effect of transfer of trading assets within a group

15A (1) For the purposes of this Part, the period for which the investing company is treated as holding a substantial shareholding in the company invested in is extended in accordance with sub-paragraph (3) if the following conditions are met.

(2) The conditions are—

(a) that, immediately before the disposal, the investing company holds a substantial shareholding in the company invested in,

(b) that an asset which, at the time of the disposal, is being used for the purposes of a trade carried on by the company invested in was transferred to it by the investing company or another company,

(c) that, at the time of the transfer of the asset, the company invested in, the investing company and, if different, the company which transferred the asset were all members of the same group, and

(d) that the asset was previously used by a member of the group (other than the company invested in) for the purposes of a trade carried on by that member at a time when it was such a member.

(3) The investing company is to be treated as having held the substantial shareholding at any time during the final 12 month

period when the asset was used as mentioned in sub-paragraph (2)(d) (if it did not hold a substantial shareholding at that time).

(4) "The final 12 month period" means the period of 12 months ending with the time of the disposal."

(3) In paragraph 19 (requirements relating to the company invested in), after sub-paragraph (2) insert—

"(2A) If the conditions in paragraph 15A(2)(b) to (d) are met, sub-paragraph (2B) applies for the purpose of determining whether the requirement of sub-paragraph (1)(a) is satisfied.

(2B) The company invested in is to be treated as having been a trading company at any time during the final 12 month period when the asset was used as mentioned in paragraph 15A(2)(d) (if it was not a trading company at that time).

(2C) "The final 12 month period" has the meaning given in paragraph 15A(4)."

Intangible fixed assets: degrouping

7 (1) Part 8 of CTA Act 2009 (intangible fixed assets) is amended as follows.

(2) In section 780 (deemed realisation and reacquisition at market value), in subsection (5)(b) before "associated" insert "certain".

(3) In section 783 (associated companies leaving group at same time), for subsection (1) substitute—

"(1) Where two companies cease to be members of a group at the same time, section 780 does not apply in relation to a transfer by one of the companies to the other if condition A or B is met.

(1A) Condition A is that the companies—

(a) are both 75% subsidiaries and effective 51% subsidiaries of another company on the date of the transfer, and

(b) remain both 75% subsidiaries and effective 51% subsidiaries of that other company until immediately after they cease to be members of the group.

(2) Condition B is that one of the companies—

(a) is both a 75% subsidiary and an effective 51% subsidiary of the other on the date of the transfer, and

(b) remains both a 75% subsidiary and an effective 51% subsidiary of the other until immediately after the companies cease to be members of the group.",

and, in the section heading, for "*Associated*" substitute "*Certain associated*".

(4) In section 788 (provisions supplementing provisions about degrouping), for subsection (3) substitute—

"(3) For the purposes of those sections and this section two companies are associated with each other if one is a 75% subsidiary of the other or both are 75% subsidiaries of another company."

Consequential repeals

8 In consequence of the omissions made by paragraph 5, omit—
(a) in IHTA 1984, section 97(1)(a)(iii) and "or" before it,
(b) in FA 2002, section 42(1) and (3)(a),
(c) in F(No.2)A 2005, in Schedule 4, paragraphs 8 and 10(3), and
(d) in FA 2009, in Schedule 12, paragraph 2.

Commencement

9 (1) The amendments made by paragraphs 1 to 5 and 8 have effect in relation to any disposal of an asset by one company ("company B") to another company ("company A") made at a time when company B is a member of a group, if—
(a) company A ceases to be a member of the group on or after the passing of this Act, or
(b) where company A ceased to be such a member before the passing of this Act in circumstances where section 179(6) to (8) of TCGA 1992 applied, company A ceases to satisfy the conditions in section 179(7) of that Act on or after the passing of this Act.

(2) The amendments made by paragraph 6 have effect in relation to disposals of shares made on or after the passing of this Act.

(3) The amendments made by paragraph 7 have effect in relation to any disposal of an asset by one company ("company B") to another company ("company A") made at a time when company B is a member of a group, if—
(a) company A ceases to be a member of the group on or after the passing of this Act, or
(b) where company A ceased to be such a member before the passing of this Act in circumstances where section 783 of CTA 2009 applied, company A ceases to be a member of another group on or after the passing of this Act.

CHARGEABLE GAINS: COMPANY CEASING TO BE MEMBER OF GROUP

SUMMARY

1. This clause and Schedule simplify certain aspects of the rules for the calculation of degrouping charges in the corporation tax regimes for chargeable gains and intangible fixed assets. The Schedule also addresses interactions between the chargeable gains degrouping charge rules and the exemption for disposals of substantial shareholdings.

DETAILS OF THE SCHEDULE

2. Paragraph 1 ensures that the operation of section 139 of the Taxation of Chargeable Gains Act 1992 (TCGA) to certain corporate reconstructions is not affected where the revised rules mean that a degrouping charge is treated as increasing the consideration on a share disposal. Section 139 of TCGA only applies where a person disposing of a company's business receives no part of the consideration for the disposal, so any additional consideration deemed to be received as a result of the degrouping rules is disregarded for the purposes of section 139.

3. Paragraph 2 removes the provision that otherwise prevents a degrouping charge being subject to an election to transfer any resulting gain or loss to another company in the same group under section 171A of TCGA. Previously such transfers were dealt with under section 179A, which is being repealed.

4. Paragraph 3 amends the main degrouping charge provisions at section 179 of TCGA.

5. Paragraph 3(2) ensures that a degrouping charge can only arise in respect of an asset transferred between two companies at a time when both are members of the same group.

6. Paragraph 3(4) amends the "associated companies exception" in section 179(2) of TCGA, which prevents a degrouping charge arising where two associated companies leave a group together, and an asset has previously been transferred between those associated companies. The new exception applies where two companies are part of the same sub-group at all times from when the asset is transferred until immediately after they leave the original group.

7. Paragraph 3(6) introduces new rules at new sections 179(3A) to (3F) of TCGA which provide a new mechanism for bringing into account a degrouping charge where it arises on a company leaving a group as a result of a disposal of shares by a group company within the charge to corporation tax. In such cases, any degrouping gain or loss will instead result in an adjustment to the chargeable gain or allowable loss that arises on the share disposal.

8. New section 179(3A) disapplies the normal operation of the degrouping charge in the circumstances mentioned above.

9. New section 179(3B) applies the new mechanism to companies within the charge to corporation tax and to persons charged to tax as members of a non-resident company by section 13 of TCGA.

10. New section 179(3C) provides that the degrouping gain or loss will result in an adjustment to the chargeable gain or allowable loss of the group company making a share disposal.

11. New section 179(3D) applies where a company leaves the group as a result of more than one group company making a share disposal. In those circumstances the adjustment will be shared equally or, if they so elect, as the companies wish.

12. New section 179(3E) sets out the requirements for an election under new section 179(3D).

13. New section 179(3F) applies where a company leaves a group as a result of a company making a disposal of more than one class of shares. In those circumstances the company may allocate the adjustment between each class of shares as it wishes.

14. Paragraph 3(7) to (10) apply the new mechanism to situations where a degrouping charge does not arise immediately at the point a company leaves a group, but only where certain other conditions are no longer met.

15. Paragraph 3(11) changes the time a degrouping charge accrues in cases where a company leaves a group (other than through a disposal of shares) where that charge arises because a condition is no longer met. This change is to allow the procedure for transferring gains and losses in groups in section 171A of TCGA to apply.

16. Paragraph 3(12) defines "associated companies" for the purposes of section 179(3). This reflects the changes made to the exception to the charge in section 179(2).

17. Paragraph 3(13) provides a definition of "chargeable asset" for the purposes of the section as a whole that takes account of the application of the Substantial Shareholding Exemption to the new charging mechanism. The definition was previously in section 179(1A).

18. Paragraph 4 provides a new procedure for claiming a reduction in a degrouping charge set out in new section 179ZA of TCGA.

19. New section 179ZA(2) allows a claim to be made for the reduction of the amount by which a degrouping charge is taken into account in calculating a gain on a disposal of shares under section 179(3C).

20. New section 179ZA(3) allows a similar claim in the case of a charge that arises on the company leaving the group.

21. New section 179ZA(4) provides that the effect of the claim is that the gain is reduced by an amount that is just and reasonable.

22. New section 179ZA(5) sets out the factors to be considered when making an adjustment: the amount of share capital of the company leaving the group and the transactions by which it acquired the asset.

23. New section 179ZA(6) ensures that any reduction in the gain as a result of a claim is reflected in the cost of the asset for tax purposes.

24. Paragraph 6(1) introduces amendments to the Substantial Shareholding Exemption in Schedule 7AC to TCGA that will allow the exemption to apply in situations

involving the disposal of part of a group's trading activity that has been transferred to another company in the group.

25. Paragraph 6(2) introduces a new paragraph 15A into Schedule 7AC which treats the minimum 12 month substantial shareholding requirement as having been met for the period that assets were used for a trade conducted by the group before being transferred to the company being disposed of.

26. Paragraph 6(3) amends paragraph 19 of Schedule 7AC. Where the new paragraph 15A applies the company being disposed of may be treated as having been a trading company for periods within the 12 months prior to the disposal. This applies where it was not a trading company at the time but the assets transferred to it were used for the purposes of the trade the company carried on at the time of the disposal.

27. Paragraph 7 amends the exception to the degrouping charge under the Intangible Fixed Assets rules in line with the changes to the capital gains at paragraph 3(4) of this Schedule.

28. Paragraph 9 is the commencement provision. The changes to the degrouping charge will apply to companies leaving groups on or after the date that the Finance Bill receives Royal Assent. Changes to the Substantial Shareholding Exemption have effect in relation to disposals of shares on or after that date.

BACKGROUND NOTE

29. The changes introduced by this clause follow extensive consultation by HM Treasury and HM Revenue & Customs aimed at simplifying the group aspects of the corporation tax chargeable gains regime.

30. If you have any questions about this change or comments on the legislation, please contact Philip Donlan on 020 7147 2633 (email: philip.donlan@hmrc.gsi.gov.uk) or Dipti Shah on 020 7147 2349 (email: dipti.shah1@hmrc.gsi.gov.uk).

HM Treasury contacts

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If you require this information in another language, format or have general enquiries about HM Treasury and its work, contact:

Correspondence Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 4558
Fax: 020 7270 4861

E-mail: public.enquiries@hm-treasury.gov.uk

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