HM Revenue
& Customs

Corporation tax: amending loss relief provisions

Who is likely to be affected?

Companies with brought forward corporation tax trading losses that change ownership.

General description of the measure

This measure amends and supplements existing corporation tax provisions to ease the rules restricting the availability of relief for corporation tax trading losses when companies change ownership.

Policy objective

This measure will bring the UK loss relief rules more up to date with modern commercial practice.

Background to the measure

This measure was announced in Autumn Statement 2013.

Detailed proposal

Operative date

This measure will have effect for any qualifying change of ownership on or after 1 April 2014.

Current law

Part 14 of Corporation Tax Act 2010 (CTA 2010) applies if a company carrying on a trade, investment business or property business is sold to another company not within the same '50 per cent plus' ownership. Relief for losses is restricted in any accounting period ending on or after a change in ownership if there is:

- a major change in the nature or conduct of the trade or business within three years of a change in ownership;
- after a change in ownership, a significant revival of a trade or business that has become small or negligible; or
- after a change in ownership, a significant increase in the capital of an investment business.

Proposed revisions

Legislation will be introduced in Finance Bill 2014 to amend Part 14 Corporation Tax Act 2010 to allow a holding company to be inserted at the top of a group of companies.

Under current legislation, such a transaction would be a change of ownership in respect of Part 14 loss restriction rules. The legislation will be amended to the effect that the change of ownership rules will not apply to the new holding company's purchase of the previous top holding company. However, to prevent abuse of this easement, the rules will continue to apply to the holding company shareholders throughout the transaction.

Legislation will also be introduced in Finance Bill 2014 to amend Part 14 Corporation Tax Act 2010 to amend section 688.

If a change of ownership occurs in tandem with a company with investment business significantly increasing its capital, the Part 14 loss restriction rules may apply. The definition of 'significant increase in capital' in this section will be amended to increase the threshold.

For there to be a significant increase, the capital in the company after the ownership change will now need to exceed the capital in the company before the change by £1 million and at least 25 per cent.

Summary of impacts

Exchequer impact (£m)	2013-14	2014-14	2015-16	2016-17	2017-18	2018-19
	-	negligible	negligible	negligible	negligible	negligible
	This measure is expected to have a negligible impact on the Exchequer.					
Economic impact	The measure is not expected to have any significant economic impacts.					
Impact on individuals and households	There will be no impact on individuals and households because this measure only affects companies.					
Equalities impacts	There will be no impact on equalities because this measure only affects companies.					
Impact on business including civil society organisations	Although there will be a negligible one-off cost of familiarisation, the measure will provide greater flexibility to make company ownership changes so will be welcomed. Overall, the impact of the measure on businesses and civil society organisations will be negligible.					
Operational impact (£m) (HMRC or other)	The additional costs for HM Revenue & Customs in implementing this measure are anticipated to be negligible.					
Other impacts	Other impacts have been considered and none have been identified.					

Monitoring and evaluation

This measure will be kept under review through communication with affected taxpayer groups.

Further advice

If you have any questions about this change, please contact Julian Ainley on 07833 480776 (email: julian.ainley@hmrc.gsi.gov.uk).

1 Changes in company ownership

(1) Part 14 of CTA 2010 (change in company ownership) is amended as follows.

(2) In section 688 (meaning of "significant increase in the amount of a company's capital"), in subsection (2), for paragraph (b) and the "or" before it substitute ", and

(b) is at least 125% of amount A."

(3) In section 723 (changes in indirect ownership), in subsection (1), after "section 724" insert "or 724A".

(4) After section 724 insert—

"724A Disregard of change in parent company

(1) Where a new company ("N") acquires all the issued share capital of another company ("C"), the resulting ownership change is disregarded for the purposes of Chapters 2 to 6 if, immediately after that acquisition ("the acquisition"), N—

(a) possesses all of the voting power in C,

(b) is beneficially entitled to 100% of any profits available for distribution to equity holders of C,

(c) would be beneficially entitled to 100% of any assets of C available for distribution to its equity holders in the event of a winding up of C or in any other circumstances, and

(d) meets the continuity requirements.

(2) "The resulting ownership change" means the change in the ownership of C by reason of Condition A in section 719 being met in relation to the acquisition.

(3) A company is "new" if it has not, before the acquisition—

(a) issued any shares other than subscriber shares, or

(b) begun to carry on, or make preparations for carrying on, any trade or business.

(4) N meets the continuity requirements if, and only if—

(a) the consideration for the acquisition consists only of the issue of shares in N to the shareholders of C,

(b) immediately after the acquisition, each person who immediately before the acquisition was a shareholder of C is a shareholder of N,

(c) immediately after the acquisition, the shares in N are of the same classes as were the shares in C immediately before the acquisition,

(d) immediately after the acquisition, the number of shares of any particular class in N bears to all the shares in N the same proportion as the number of shares of that class in C bore to all the shares in C immediately before the acquisition,

(e) immediately after the acquisition, the proportion of shares of any particular class in N held by any particular shareholder is the same as the proportion of shares of that class in C held by that shareholder immediately before the acquisition,

(f) each shareholder of N immediately after the acquisition has the same entitlement in respect of N's profits (in the event of a distribution of all N's profits) as that shareholder had in relation to a distribution of C's profits immediately before the acquisition, and

(g) each shareholder of N immediately after the acquisition has the same entitlement, in the event of a winding up of N and any other circumstances, in relation to the assets of N which would then be available for distribution, as the shareholder had immediately before the acquisition in relation to the assets of C which would have been available for distribution in the event of a winding up of C and those other circumstances.

(5) Chapter 6 of Part 5 (equity holders and profits or assets available for distribution) applies for the purposes of subsection (1)(b) and (c) as it applies for the purposes of section 151(4)."

(5) In section 726 (interpretation of Chapter), after "acquisition" insert "and shareholder".

(6) The amendments made by this section have effect in relation to any change of ownership which occurs on or after 1 April 2014.

EXPLANATORY NOTE

CHANGES IN COMPANY OWNERSHIP

SUMMARY

1. Clause [X] introduces two changes to Part 14 Corporation Tax Act 2010 (CTA 2010), amending section 688 and introducing a new section (724A). The amendment to section 688 changes the definition of a significant increase in the amount of a company's capital. The new section 724A provides for the disregard of a change of ownership of a company (C) where it is acquired by a new company (N) and, broadly, the shareholders and shares of N after the acquisition are the same as shareholders and shares in C before.

DETAILS OF THE CLAUSE

2. Subsection (2) amends the definition in subsection (2) of section 688 of a significant increase in capital of a company.

3. Subsection (3) amends subsection (1) of section 723 to include a reference to section 724A.

4. Subsection (4) introduces a new section to Part 14. Section 724A disregards a change in parent company for the purposes of Chapters 2 to 6 of Part 14 if the conditions in subsections (1) to (5) of 724A are met.

5. Subsection (5) includes a reference to a shareholder in section 726 (interpretation of Chapter).

6. Subsection 724A(1) provides that a change of ownership of a company (C) is disregarded where a new company (N) acquires all the issued shares of C. The subsection provides for particular conditions in relation to the acquisition of C by N which must be met for the section to apply. These include conditions relating to the voting power of C as well as entitlement to profits and assets of C available for distribution to equity holders. It also provides that the 'continuity requirements' must be met.

7. Subsection 724A(2) defines "the resulting ownership change".

8. Subsection 724A(3) defines a "new" company.

9. Subsection 724A(4) sets out the continuity requirements which are, broadly, concerned that the acquisition of C by N has been by way of a share for share exchange. The first requirement, in subsection (4)(a), is that the consideration for the acquisition consists only of the issue of shares in N to the shareholders of C. The remaining requirements ((4)(b) to (g)) set out various tests requiring a comparison between shareholders in C immediately

before the acquisition with N immediately after. These requirements include tests relating to the shareholders, the classes of shares, the proportion of shares held in each class, the proportion of shares of each class held by each shareholder, and the entitlement of each shareholder in respect of distributions of profits or assets on a winding up.

10. Subsection 724A(5) ensures that Chapter 6 of Part 5 (equity holders and profits or assets available for distribution) applies for the purposes of subsection (1)(b) and (c).

BACKGROUND NOTE

11. These changes have been introduced to bring the change in company ownership rules in Part 14 CTA 2010 in line with modern commercial practice.

12. The threshold for a significant increase in capital for companies with investment business has remained unchanged since 1995. The measure relaxes the threshold limit to reflect the general increase in investment business capital levels since that time.

13. There is also a new disregard from section 719, specifically allowing new holding companies to be inserted at the top of a group without triggering a change of ownership for the purposes of Chapters 2 to 6 of Part 14. There is an existing disregard at section 724 but it only covers the event of an insertion below the group parent.

14. If you have any questions about this change, or comments on the legislation, please contact Julian Ainley on 07833 480776 (email: julian.ainley@hmrc.gsi.gov.uk).