HM Treasury

Reform of the Substantial Shareholdings Exemption:

consultation

May 2016

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1 Introduction

Background

1.1 The Substantial Shareholdings Exemption (SSE) provides an exemption from corporation tax for capital gains and losses realised on the disposal of certain shareholdings. It was introduced in 2002 and was motivated by two principal concerns around the application of a corporation tax charge to share disposal gains.

1.2 The first concern was that a corporation tax charge on share disposal gains could be unduly influencing business decisions on restructuring and reinvestment. For example, a UK holding company with significant capital gains being deterred from making a productive disposal.

1.3 The second was that a corporation tax charge on share disposal gains could be creating incentives for groups to adopt complex offshore holding structures, reducing transparency and creating unnecessary administrative burdens for businesses and HMRC.

1.4 The SSE was designed to address these two concerns, with its application broadly limited to gains realised by trading groups on the disposal of shares in trading companies, limitations which remain in the legislation that operates today.

Consultation

1.5 The government believes that the SSE is generally realising its policy objective of ensuring that the tax treatment of share disposal gains does not discourage trading groups from restructuring or making productive disposals.

1.6 The government does however recognise that there have been fundamental changes to the domestic and international tax landscapes since the SSE was first introduced, changes which raise questions around the relevance of its original policy intention and the impact it is having on the UK's competitiveness as a holding company location.

1.7 It is also aware of concerns regarding the SSE's complexity and the potential for its application to be uncertain or contingent on factors outside of a company's control.

1.8 For these reasons the government announced its intention to consult on the SSE at Budget 2016 and to consider whether there are reforms that would make it simpler, more coherent and more internationally competitive.

1.9 In line with that announcement, this consultation sets out a number of options for possible reform of the SSE, ranging from technical changes to the existing legislation to a more comprehensive exemption for gains on substantial share disposals that corresponds with participation exemption regimes in place in some other EU countries.

1.10 The consultation considers the impact of these reforms and the potential benefits for the UK economy. It also considers the potential risks associated with reform and how these could be adequately be protected against.

Timing

1.11 The consultation will run until 18 August. This will allow the government to consider the merits of reform ahead of Autumn Statement and possible legislation in Finance Bill 2017.

1.12 Responses should be made to the following address:

Corporate Tax Team
HM Treasury
1 Horse Guards Rd
London
SW1A 2HQ

SSEConsultation@hmtreasury.gsi.gov.uk

2 Background

2.1 The SSE was introduced to ensure that the application of corporation tax to capital gains on share disposals does not discourage groups from making rational decisions on restructuring or the disposal of trading companies.

2.2 This section of the consultation explains how the SSE was designed in order to deliver that objective. It also outlines the substantive changes that have been made to the SSE legislation since its introduction to ensure that its objectives are being realised.

Qualifying criteria

2.3 Where a UK company ('Company A') disposes of shares in another company ('Company B'), any resulting chargeable gain will be subject to UK corporation tax unless the substantial shareholding exemption applies. In order for this exemption to be available, there are three requirements that need to be met:

a. The substantial shareholding requirement: Company A must have held a substantial shareholding in Company B for a continuous 12-month period in the 2 years prior to the disposal, which is referred to below as the qualifying period.

   Company A is considered to have held a substantial shareholding in Company B if it holds at least 10% of Company B's ordinary share capital, is entitled to at least 10% of profits available for distribution to Company B's equity holders, and would be beneficially entitled to at least 10% of assets available for distribution to equity holders on Company B's winding up.

b. The investing requirement: Company A must have been a trading company or, if part of a group, a member of a trading group throughout the qualifying period. It must also be a trading company or a member of a trading group immediately after the disposal.

c. The investee requirement: Company B must have been a trading company or, if part of a group, a holding company of a trading sub-group throughout the qualifying period. It must also be a trading company or a member of a trading group immediately after the disposal.

2.4 These requirements are intended to target the SSE towards instances where a tax charge on share disposal gains could have the most undesirable influence on business decisions and group structures.

2.5 They also help to protect the exemption from abuse and ensure that the exemption is not available in situations where share disposal gains are realised as part of the ordinary trading course of a business.

Key concepts

2.6 For SSE purposes, a group is defined as a principal company and all the companies in which it holds a 51% shareholding, either directly or indirectly. One company is an effective 51% subsidiary of another if the latter is entitled to more than 50% of profits available for distribution to equity holders and would, on a winding up, be beneficially entitled to more than 50% of the assets available for distribution to equity holders.

2.7 For SSE purposes, a trading group is one in which the members of the group do not undertake non-trading activities to a substantial extent. In determining whether this threshold has been met, consideration may be given to a number of factors including the level of turnover from non-trading activities, the value of non-trading assets in relation to trading assets and the time/expenditure incurred by employees on non-trading activities.

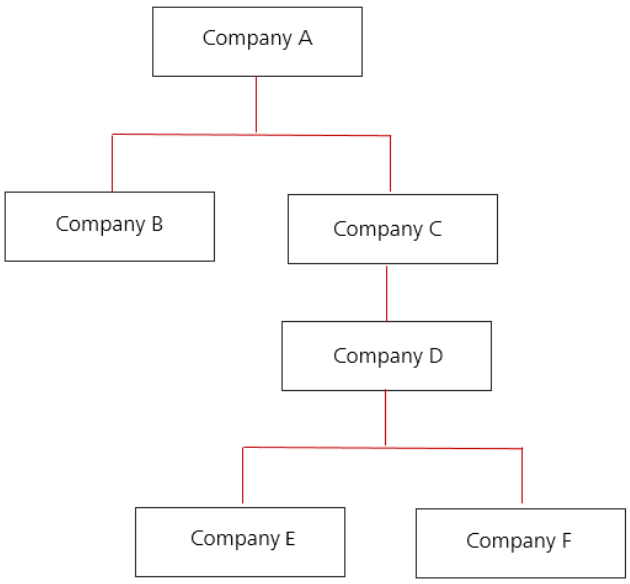
2.8 Trading activities are not explicitly defined in legislation but for SSE purposes include activities undertaken as part of a trade that a company is carrying on, activities undertaken for the purposes of a trade it is preparing to carry on, activities undertaken with a view to acquiring or commencing a trade, and activities undertaken with a view to acquiring a significant interest in the share capital of a trading company/group.

2.9 The SSE applies equally to gains and losses on qualifying share disposals. That means that losses incurred on a share disposal that qualifies for the SSE are not deductible for corporation tax purposes.

Illustrative example

2.10 Consider that Company C is a UK-resident company and that it disposed of its shareholding in Company D on 31 December 2015 at a gain. This gain would be exempt from corporation tax if the following conditions were satisfied.

- Company C continuously held a substantial shareholding in Company D for 12 months across the period 1 January 2014 to 31 December 2015
- throughout this period, the members of the group of which Company C is a part (i.e. Companies A to F) did not undertake substantial non-trading activities
- throughout this period, the members of the sub-group headed by Company D (i.e. Companies D, E and F) did not undertake substantial non-trading activities
- immediately after the disposal, the members of the group of which Company C remains a part (i.e. Companies A, B and C) are not undertaking substantial non-trading activities
- immediately after the disposal, the members of the group/sub-group headed by Company D (i.e. Companies D, E and F) are not undertaking substantial non-trading activities



Design changes

2.11 The SSE allows trading groups to dispose of trading subsidiaries without gains being subject to a corporation tax charge. It does not however accommodate the disposal of trading assets or trading branches within a company. Two changes were made in Finance Act 2011 to address this asymmetry.

2.12 Firstly the period over which a parent is treated as holding shares in a subsidiary for the purposes of the SSE was extended where that subsidiary's trade/assets were previously owned by another group company. This allow groups to put trading activities into a newly incorporated subsidiary and then sell that subsidiary without share disposal gains being subject to corporation tax.

2.13 Secondly there was a change to the de-grouping charge that arises when an asset is transferred on a no gain/no loss basis to a company that is then sold within 6 years. The change was to treat these de-grouping charges as an additional consideration for the disposal in the hands of the seller. This means that the de-grouping charge is effectively extinguished where the disposal qualifies for the SSE.

3 Drivers for change

3.1 The government believes that the SSE is generally realising its policy objective of ensuring that the tax treatment of share disposal gains does not discourage trading groups from restructuring or making productive disposals. That said, it acknowledges that there are reasons for considering reform of the SSE and revisiting its original policy rationale.

3.2 This section of the consultation explores these reasons and invites comments on their relevance and materiality. It also considers the impact that reform could have on the decision of groups to locate their holding companies in the UK and the benefits that this would provide for the Exchequer.

Simplicity

3.3 The government is aware of concerns that the criteria for determining the SSE's availability make the regime more complex than those in other jurisdictions, which impose fewer conditions on the nature of the companies involved in the transaction.

3.4 It has also been noted that the application of trading requirements at the level of the investor group can make the availability of the SSE contingent on factors that are difficult to forecast or outside of a UK company's control (or the control of a holding company of a UK sub-group).

3.5 It has been suggested that these complexities and uncertainties can create unnecessary administrative burdens for business and can deter groups from locating their holding companies in the UK, even where there is a reasonable likelihood that the SSE would be available for share disposal gains.

Competitiveness

3.6 The UK corporate tax regime has a number of features that are attractive for group headquarters or regional holding companies. These include a comprehensive exemption for distributions, an extensive tax treaty network, the absence of a withholding tax requirement on dividend payments and a broadly territorial regime for taxing UK company profits.

3.7 Despite this, the government has been made aware of concerns that the SSE is impacting on the UK's attractiveness as a holding company location for groups with substantial investment activities.

3.8 This reflects the SSE's unavailability to:

- companies within groups that have substantial investment assets, irrespective of the nature of the shareholding being disposed of
- companies within trading groups that are disposing of shares in a non-trading company or sub-group
- companies within trading groups disposing of sizeable but not substantial investments in trading companies i.e. less than 10% of ordinary share capital
- funds that make investments in trading and non-trading companies via intermediate corporate vehicles

3.9 It has been suggested that the unavailability of the SSE leads these groups to locate their holding companies in jurisdictions with more comprehensive exemptions for gains on substantial share disposals, with opportunity costs for the UK in terms of tax receipts and demand for accounting, legal and advisory services.

Coherence

3.10 There have been fundamental reforms to the UK corporate tax system since the SSE was first introduced in 2002.

3.11 These include the introduction of a comprehensive exemption system for dividends received from overseas companies. They also include the introduction of an elective branch exemption and reforms to the controlled foreign company regime to ensure that it is appropriately targeted at the artificial diversion of profits from the UK.

3.12 It has been suggested that the potential for corporation tax to apply to gains on non-SSE eligible substantial shareholdings is inconsistent with the move from a worldwide to a territorial tax system.

3.13 It has also been noted that the asymmetric tax treatment of distributions and capital gains can distort decisions on the extraction of value from a company, distortions which would not arise if the treatment of gains and dividends were aligned under an all-encompassing participation exemption.

Base Erosion and Profit Shifting (BEPS) project

3.14 The recommendations of the G20/OECD BEPS project are intended to ensure greater alignment between the location of taxable profit and the underlying activities and substance giving rise to that profit.

3.15 These recommendations, and participating countries' responses to them, are resulting in groups re-examining the location of their international operations in order to consider how the alignment between holding structures and management activities can best be achieved.

3.16 This creates an opportunity for the UK to attract further inward investment from groups and funds looking to consolidate their existing UK management functions. However, it also creates a risk that groups will relocate their management functions from the UK to countries in which their holding structures are commonly located.

3.17 It has been argued that reform of the SSE would be a justifiable response to these risks and opportunities, in helping to ensure that the tax treatment of share disposal gains does not impede the type of group restructuring that represents a positive response to the BEPS project.

Considerations

3.18 The government welcomes views on the materiality and relevance of these issues, as well as any additional factors that would support the case for SSE reform.

3.19 It would welcome examples of situations where: (a) gains arising on the disposal of shares have fallen outside of the SSE, or would have done had the company making the disposal been UK resident; and (b) the availability of the SSE for share disposal gains has been subject to significant uncertainty.

3.20 It then invites respondents to explain how the examples put forward (and the particular circumstances that have led to uncertainty or a failure of the SSE requirements) would be dealt

with under equivalent overseas exemptions, and the impact that this has had on the motivation of groups to locate their holding companies in the UK.

3.21 In approaching this last point, it is important that respondents explain the significance of the SSE compared to other aspects of the UK corporate tax system relevant to holding companies. It is also important that respondents outline the possible direct/indirect economic benefits from attracting holding companies to the UK as a result of reform e.g. employment, investment and tax receipts.

3.22 This evidential base will be crucial in assessing whether the costs and risks associated with reform of the SSE represent value-for-money to the Exchequer.

Questions

Question 1: To what extent does the SSE currently meet its objectives of i) encouraging rational decision making on restructuring and the disposal of trading entities within a group, and ii) reducing incentives to adopt complex offshore holding company structures?

Question 2: What complexities arise in practice for domestic or foreign headed groups in applying the SSE?

Question 3: In what additional situations do you consider the SSE should be available for substantial share disposals and how does this compare to the availability of equivalent exemptions in overseas jurisdictions?

Question 4: To what extent could reform of the SSE impact on the likelihood of groups locating holding companies in the UK, and what are the potential benefits from an economic and fiscal perspective?

4 Options for possible reform

4.1 This section of the consultation sets out a number of options for possible reform of the SSE.

4.2 It starts by considering the case for a comprehensive exemption for share disposal gains. It then considers how to protect against the risks associated with such an exemption and the extent to which this protection necessitates the retention of conditions on the activities of a company being disposed of.

4.3 It finally considers possible changes that could be made within the existing SSE framework, including a change to the application of the trading tests and a change to what is defined as a substantial shareholding.

4.4 The government welcomes comments on the extent to which these reforms would address the concerns raised in the previous chapter and provide for a simpler, more coherent and more internationally competitive regime. It also welcomes comments on how these reforms could be designed in a way which delivers value-for-money for the Exchequer and ensures adequate protection against abuse.

4.5 It should be noted that the options set out below are not all mutually exclusive and the government invites views on their potential impacts if pursued in isolation or as part of a broader package of changes.

Option 1: Comprehensive exemption

4.6 Some countries' corporate tax systems include wide-ranging exemptions for gains on substantial share disposals, with minimal requirements as to the nature or activities of the companies involved in the transaction.

4.7 It is difficult to make direct comparisons with other countries given the significant differences in their economies, the composition of their tax receipts and the design of their wider corporate tax systems.

4.8 That said, the government is still willing to explore the case for a more comprehensive exemption for gains on share disposals subject to the following parameters:

- the exemption should not be available where the capital gain on a share disposal reflects the ordinary trading course of a business, something which the minimum shareholding and retention period requirements help to protect against
- the exemption should, as far as possible, be confined to gains that result from effectively taxed income
- the exemption should not create scope for the tax-free transfer of enveloped passive assets
- there should continue to be symmetry between capital gains and capital losses i.e. capital losses realised on the sale of qualifying shareholdings should not be allowable for corporation tax purposes

4.9 The second and third conditions are particularly important. A broad exemption for gains on substantial share disposals, which imposes no requirements as to the nature and activities of the company being disposed of, has the potential to create opportunities for abuse.

4.10 Firstly it could enable companies to avoid corporation tax on gains relating to the disposal of property, land and intellectual property used in their business by holding and then disposing of these assets through corporate vehicles.

4.11 Secondly it could create incentives for individuals to hold their assets through a corporate vehicle in order to defer tax on disposal gains until these are distributed as a dividend or the company is liquidated.

4.12 Thirdly it could put greater pressure on the UK's controlled foreign company regime to protect against groups holding passive portfolio investments in low-tax jurisdictions and then repatriating profits tax-free through a corporate sale or liquidation.

4.13 The government is not prepared to make changes that facilitate such risks and would need to be convinced that they are immaterial or can be protected against through fair and administrable anti-avoidance provisions.

Option 2: Exemption subject to investee trading test

4.14 It may be that the only way to protect a comprehensive exemption on share disposal gains from avoidance, such as the enveloping of assets, is to retain conditions on the nature or activities of the company being disposed of.

4.15 The purpose of these conditions would be to prevent the exemption from applying: (a) to gains on the disposal of a company that is enveloping assets and does not have any substantive business activity; and (b) to gains on the disposal of shares in a passive investment company located in a low-tax jurisdiction.

4.16 One approach here would be to retain the trading condition on the company or sub-group being disposed of, but remove the condition that the company making the disposal be part of a trading group.

4.17 This would represent a significant simplification of the SSE. It would also mean that the exemption is available whenever a trading company or sub-group is disposed of, even where the disposal is made by an investment company or a company within a group that is substantially non-trading.

4.18 The government recognises that there would still be situations where gains on substantial share disposals fall within the charge to corporation tax and invites comments from respondents on the extent to which this would dilute the benefits of reform.

Option 3: Exemption subject to investee test other than trading

4.19 As set out above, it may be that the only way to protect a comprehensive exemption on share disposal gains from avoidance is to retain some condition on the activities of the company being disposed of.

4.20 Whilst this condition could be based on a trading and investment distinction in line with the existing investee test, the government would like to consider whether there are alternative conditions at the investee level that could provide more targeted protection against abuse and prevent this protection from impacting on the SSE's wider availability.

4.21 Three approaches have been put forward in representations by businesses:

- requiring the company or sub-group being disposed of to be either trading or actively conducting business activities other than trading
- requiring the company or sub-group being disposed of to be carrying on a business as defined in HMRC's Capital Gains manual at CG52709, which may accommodate investment companies to the extent that there are significant associated management functions
- requiring the company or sub-group being disposed of to be either trading or conducting certain activities that are to be positively defined in legislation

4.22 The government welcomes views on these approaches, including their practicality and their effectiveness in safeguarding the exemption from abuse.

Option 4: Amended trading tests at investee and investor level

4.23 The options set out above would represent a fundamental change to the SSE's policy rationale in making the exemption available to investment groups disposing of companies/sub-groups that are trading or meet some alternative criteria.

4.24 The government would need to be convinced that there material benefits to the UK from such a change in policy and that the costs are both absorbable and represent value-for-money to the Exchequer.

4.25 Reflecting this, the government would also welcome views on changes that could be made to the SSE within its existing legislative framework i.e. maintaining conditions at both the level of the investor and the level of the investee.

4.26 One approach here could be to focus the investing and investee trading tests on the companies involved in the transaction, rather than applying these tests at a group or sub-group level. This could help to reduce some of the complexities in the SSE's operation. It could also help to ensure that the availability of the SSE is contingent on factors that a UK company controls or has clear oversight of.

4.27 The government would need to consider how non-trading holding companies of a trading group/sub-group would be accommodated under a company-level test. It would also need to consider how a company-level test could be designed in a way that upholds the policy objective and prevents small trading companies from being inserted into an investment group structure for the purpose of accessing the SSE on share disposals.

4.28 An alternative approach could be to retain the trading conditions at the level of the investor and the investee but extend the definition of qualifying activities used in applying these conditions in the manner discussed under Option 3.

4.29 That could mean defining a qualifying group for the SSE as one which does not undertake, to a substantial extent, activities that are deemed to be both non-trading and passive. It could alternatively mean defining a qualifying group as one which does not undertake, to a substantial extent, activities that are deemed to be both non-trading and outside of some specified definition of a business.

Option 5: Changing the definition of 'substantial shareholding'

4.30 The legislation currently deems a company to hold a substantial shareholding if it holds at least 10% of a company's ordinary share capital.

4.31 Alongside the minimum retention period, this helps to target the exemption towards disposals of significant long-term shareholdings and helps to avoid it being available for gains realised as part of the ordinary trading course of a business.

4.32 The government would welcome examples of situations where disposals of large and long-term shareholdings have not satisfied the substantial definition, or would not have done so had the disposing company been UK resident e.g. significant infrastructure projects where a shareholding of less than 10% may still represent multiple billions of invested capital.

4.33 That said, the government is generally sceptical about the merits of lowering the substantial shareholding threshold or augmenting it with a minimum invested capital requirement. It would need to be persuaded that there is a strong justification for this.

Questions

Comprehensive exemption:

Question 5: To what extent do you agree with the parameters set out for a comprehensive exemption?

Question 6: To what extent do you consider that a comprehensive exemption for gains on substantial share disposals, that imposes fewer conditions on the nature of the companies involved in the transaction, could address the concerns raised in the previous chapter?

Question 7: To what extent could the avoidance risks, including enveloping risks, inherent in a comprehensive exemption be dealt with through anti-abuse provisions?

Question 8: Do you consider that the benefits of a comprehensive exemption would be materially reduced if a trading condition was retained at the investee level? Please provide any relevant examples to support this.

Question 9: Are there alternative tests at the investee level that would still provide sufficient protection against abuse?

SSE framework:

Question 10: What benefits would there be in focusing the investing and investee conditions on the companies involved in the transaction? How could such a change be protected from abuse?

Question 11: Are there changes that could be made to the definition of qualifying activity that would help to better deliver the SSE's policy objectives while maintaining sufficient protection against abuse?

Question 12: In what situations does the definition of a substantial shareholding prevent large and long-term investments benefitting from the SSE? What is the case for these situations being accommodated?

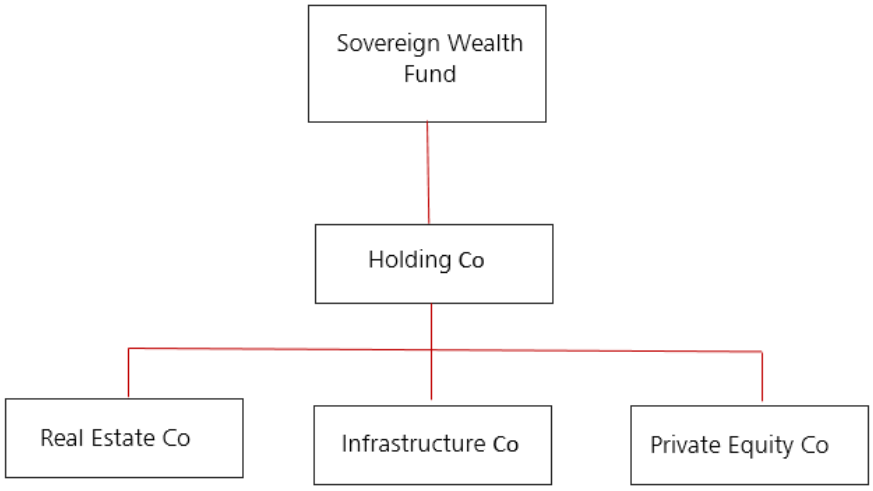
Question 13: What other substantive reforms could be considered to make the SSE simpler, more coherent and more internationally competitive?

5 Treatment of funds

5.1 Sovereign wealth funds and pension funds are generally exempt from UK corporation tax on their investment gains. This means that gains on the disposal of a direct shareholding are not subject to tax, irrespective of whether the SSE applies.

5.2 This exemption does not extend to UK resident companies owned by these tax-exempt funds. These companies are subject to corporation tax on gains relating to share disposals and cannot generally benefit from the SSE given due to the presence of substantial non-trading activities in the groups of which they are a part.

5.3 For this reason, it is understood that sovereign-wealth funds and pension funds often choose to locate their holding platforms outside of the UK in countries where share disposals are exempt from corporation tax under a comprehensive participation exemption.

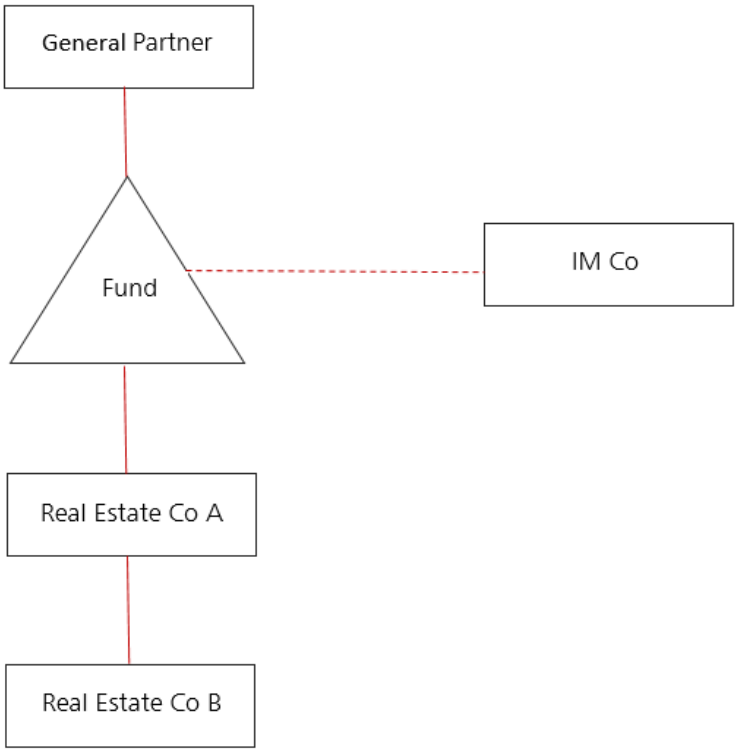


5.4 The same may be true for funds structured as transparent entities.

5.5 The real-estate fund depicted below is structured as a partnership and thus transparent for tax purposes. This means that gains on the disposal of a directly held shareholding are attributed to partners in the fund and taxed according to these partners' particular circumstances.

5.6 This transparency does not extend to UK resident companies owned by the fund. These companies are subject to corporation tax on gains relating to share disposals unless these disposals fall within scope of the SSE.

5.7 It is again unlikely that the SSE will be applicable here, with the same implications in terms of where these funds then locate their holding companies.



Considerations

5.8 It may be said that the SSE's inaccessibility to the funds depicted above is no different from the SSE's inaccessibility to any other groups that have substantial non-trading activities, and that any extension to the SSE should have common application. However, the government would like to consider whether there could be a case for reform of the SSE to be targeted towards the funds sector.

5.9 This could reflect three things. Firstly it could reflect the fact that funds' investment gains are not generally subject to UK corporation tax and only fall within scope where investments are made indirectly through a UK resident company.

5.10 Secondly it could reflect the reduced avoidance risk that would come from targeting reform to funds that meet certain characteristics e.g. widely-owned, regulated and subject to minimum distribution requirements.

5.11 Finally it could reflect the reduction in cost that would come from targeting reform of the SSE towards groups that currently have their holding platforms overseas, where gains on share disposals will already be outside of the scope of UK corporation tax.

5.12 The government welcomes views on this and the criteria that could be used to define funds if such targeted reforms were to be considered justified.

Questions

Question 14: Is there a case for reform of the SSE to be targeted towards the funds sector? How could SSE-qualifying funds be defined for this purpose?

6 Detailed design modifications

6.1 The options set out above are focused on extending the availability of the SSE and considering how its qualifying criteria can be simplified.

6.2 The government also wants to use this consultation to consider the case for detailed amendments to the legislation in areas where it may be ambiguous or where it is producing outcomes that are inconsistent with the policy intention.

6.3 The government welcomes comments on the specific issues identified below and invites views on any other areas of the SSE legislation that could usefully be clarified or amended in line with the above.

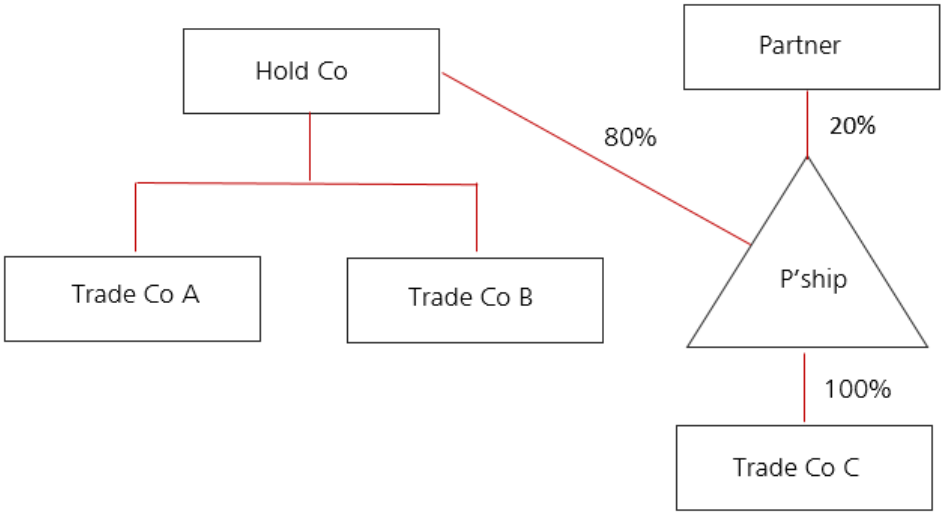
Shareholdings held within a partnership

6.4 In determining whether a company is disposing of a substantial shareholding, the legislation takes into account 'interests in shares' as well as shares.

6.5 However, in determining the members of a group to which the trading conditions apply, the legislation does not take into account 'interests in shares' and instead focuses on companies in which there is a 51% ordinary share capital relationship.

6.6 This means that substantial interests a group may have in a company or group of companies through a partnership will be disregarded in determining whether the SSE's investing or investee conditions are satisfied.

6.7 The government invites comments on the extent to which this can cause disposals to fall outside of the scope of the SSE, and the case for allowing groups to take account of partnership interests in determining whether the trading conditions apply.



Structures without share capital

6.8 As set out above, in determining the members of a group for the purposes of the SSE, the legislation only takes into account relationships formed by a company owning 51% of ordinary share capital of another.

6.9 This means that companies that do not issue ordinary share capital (and any companies that these companies then own) are not considered to be part of a group, even though they could still represent material entities.

6.10 This is relevant for partnerships as illustrated above. It is also relevant for companies limited by guarantee, which are controlled by members as opposed to being owned by shareholders, and non-UK structures such as US Limited Liability Companies which are controlled by members and transparent for tax purposes.

6.11 The government invites comments on the extent to which this can cause disposals to fall outside of the scope of the SSE, and the case for including such interests in determining whether the trading conditions apply.

Qualifying period

6.12 For a company to benefit from the SSE on a disposal of shares in another company, it must have held a 10% shareholding in that company for a 12 month period in the 2 years prior to the disposal.

6.13 The government is aware of cases where share disposals have not qualified for the SSE as a result of the sale of the residual shareholding in a company being delayed by circumstances outside of a company's control.

6.14 The government considers that this issue could be addressed by extending the period over which the 10% shareholding requirement can be satisfied e.g. to 6 years in line with the period of consideration under the de-grouping rules.

6.15 This could also limit the opportunities for groups to bring disposals made at a loss outside of the SSE by artificially delaying the sale of a rump shareholding until the point at which the substantial shareholding requirement is no longer satisfied.

6.16 The government welcomes views on this. It also welcomes views on alternative approaches for accommodating investments disposed of in tranches while protecting the Exchequer from manipulation of the rules beyond their intended purpose.

Post-sale trading requirement

6.17 For a company to benefit from the SSE on a disposal of shares in another company, the companies in the transaction must be trading companies (or, if part of a group, members of a trading group) immediately after the sale.

6.18 This has the potential to create issues where the disposal of a company causes a company or group to be temporarily non-trading until the proceeds of that disposal are reinvested. It also has the potential to create issues where the disposal of a company is part of a liquidation, which could arise where a fund has a fixed investment term.

6.19 The government welcomes views on these issues.

6.20 The legislation looks to deal with the latter by overlooking the post-sale trading requirement in cases where a disposal has been made as part of a winding up or dissolution,

and where this dissolution occurs in a timescale that is considered reasonable. However, the government welcomes views on the extent to which this provision may be diluted by commercial constraints to liquidation in such a timescale.

Questions

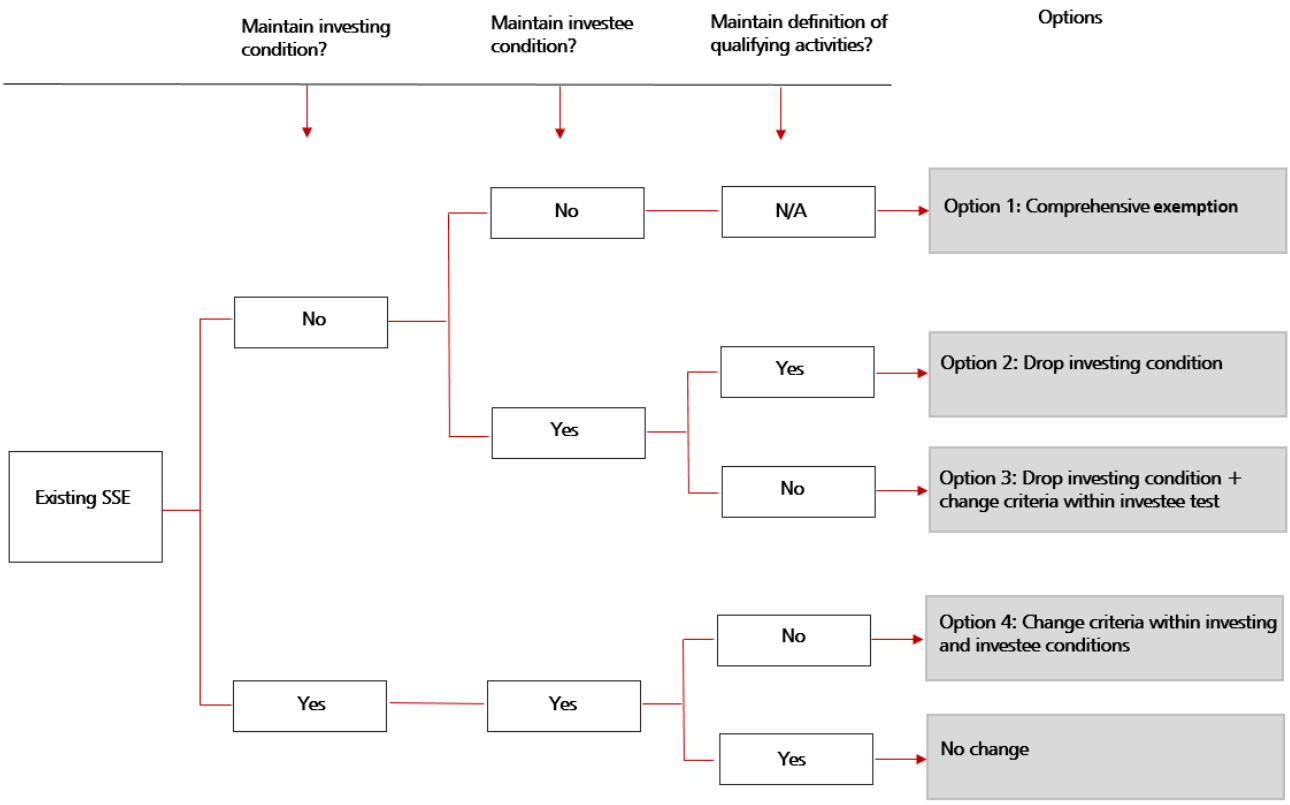
Question 15: To what extent does the SSE's focus on ordinary share capital in determining the members of a group create complexity or lead to results that are inconsistent with the policy objective?

Question 16: In what situations could delays in the sale of a residual shareholding result in the loss of SSE treatment, and how should this be rectified?

Question 17: In what situations can the post-sale trading requirement create issues that are not accommodated by the existing winding-up provisions?

Question 16: Are there other areas of the SSE legislation that you consider to be ambiguous or producing outcomes that are inconsistent with the policy intention?

A Illustrating the options



- All of these options could be combined with a change to the definition of a substantial shareholding.
- All of these options barring Option 1 could also be combined with a change to the application of the trading conditions i.e. to target them towards the companies involved in the transaction as opposed to the group/sub-group.

HM Treasury contacts

This document can be downloaded from www.gov.uk

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