

Clause 1: Substantial shareholding exemption: institutional investors

Summary

1. This clause introduces a form of the substantial shareholdings exemption (SSE) that has fewer qualifying conditions for companies that are wholly or partly owned by certain institutional investors. The SSE provides an exemption from corporation tax for capital gains and losses realised on the disposal of certain shareholdings. The clause provides for an exemption without regard to the nature of the business activities of either the company making the disposal or the company in which it has a substantial shareholding. Partial exemption is given where the interest of qualifying institutional investors in the ordinary share capital of the company making a disposal is between 25% and 80%. It has effect for disposals of substantial shareholdings on or after 1 April 2017.

Details of the clause

2. Subsection 1 introduces the amendments to Schedule 7AC to the Taxation of Chargeable Gains Act 1992 (TCGA)
3. Subsection 2 inserts new paragraphs 3A and 3B of the Schedule which set out when the new exemption is available and how much of a gain or loss is exempt where the company making the disposal (“the investing company”) is partly owned by qualifying institutional investors.
4. New subparagraphs (1) and (2) of paragraph 3A provide that the provisions of the new paragraph apply to an investing company if it has disposed of shares (or an interest in shares) in another company in which it had a substantial shareholding (“the company invested in”) but SSE does not otherwise apply to that disposal because the company invested in fails to meet the requirements in paragraph 19 of the Schedule. Those requirements are that the company invested in is a sole trading company, or the holding company of a trading group or a trading sub-group at the specified times. They state that the new provisions do not apply if the investing company is a disqualified listed company.
5. New subparagraph (3) of paragraph 3A provides that any gain or loss on the disposal is exempt if qualifying institutional investors own at least 80% of the ordinary share capital of the investing company.
6. New subparagraph (4) of paragraph 3A provides for a proportionate part of the gain or loss to be exempt if qualifying institutional investors own between 25% and 80% of the ordinary share capital of the investing company.
7. New subparagraph (5) of paragraph 3A sets out what is meant by a “disqualified listed company”. A listed company is disqualified if any of the shares forming part of

the ordinary share capital are listed on a recognised stock exchange, except for companies that are qualifying institutional investors or qualifying UK REITs.

8. New subparagraph (6) of paragraph 3A sets out what is meant by a “qualifying UK REIT”. A qualifying UK REIT is a UK REIT which is not a close company by virtue of having an institutional investor as a participant, or is not treated as a close company because it is controlled by or on behalf of Crown.
9. New paragraph 3B applies for the purposes of paragraph 3A.
10. New subparagraphs (2) and (3) of paragraph 3B set out that ownership is based on holdings of ordinary share capital in a company, and this can be held directly by the qualifying institutional investor, or indirectly through other entities, including through other companies. They set out what is meant by indirect ownership.
11. New sub-paragraph (4) (a) of paragraph 3B provides an exception to this general rule in the case of a disqualified listed company. A qualifying investor will not be regarded as having indirect ownership of the investing company to the extent that it is necessary to trace its ownership through a company whose shares are listed on a recognised stock exchange, unless that company is a qualifying institutional investor, or a UK REIT which is established by qualifying institutional investors. The effect of this rule is that a qualifying institutional investor is not treated as holding an interest in the ordinary shares of a subsidiary or joint venture company partly owned by the listed company.
12. New sub-paragraph (4)(b) of paragraph 3B ensures that an Exempt Unauthorised Unit Trust is treated in the same way as a body corporate for the purpose of tracing ownership of shareholdings by qualifying institutional investors (and references to ordinary share capital, in the case of such a trust, as references to units in the trust).
13. New subparagraph (5) of paragraph 3B ensures that where the shares of a company are subject to either a sale and repurchase agreement (‘repo’) or a stock lending arrangement, those arrangements are disregarded for the purposes of determining whether a qualifying institutional investor has a direct or indirect interest in the shares of the investing company.
14. New subparagraph (6) of paragraph 3B sets out how ownership of shares held through a partnership are to be regarded. It treats each partner as holding a proportion of the share capital equal to the partner’s proportionate interest in the ordinary share capital.
15. New subparagraph (7) of paragraph 3B defines “exempt unauthorised unit trust” as having the same meaning as in the Unauthorised Unit Trusts (Tax) Regulations 2013 (SI 2013/2819).”
16. Subsection 3 of the clause inserts new paragraph 8A into the schedule, which sets out when the exemption in paragraph 3 or 3A apply.
17. New subparagraph (1) of paragraph 8A provides for the exemption to apply where at least 25% of the ordinary share capital of the investing company is owned by qualifying institutional investors.
18. New subparagraph (2) of paragraph 8A provides that the requirement for a substantial shareholding to be at least 10% of the ordinary share capital of the

company invested in is relaxed for the purposes of the new exemption if the shareholding, although less than 10%, was acquired for more than £20 million. This ensures that major investments by qualifying institutional investors will qualify for exemption.

19. New subparagraphs (3) to (6) of paragraph 8A set out the requirements of the investment in order to qualify for the exemption.
20. Subsection 4 of the clause makes further changes consequential to the provisions of subsection 3.
21. Subsection 5 inserts new paragraph 30A into the schedule. New subparagraph (1) of paragraph 30A sets out the meaning of qualifying institutional investor for the purpose of the new exemption. Certain collective investment schemes will only be regarded as qualifying institutional investors if they meet a requirement that their shares or units are 'widely marketed' to appropriate investors, or have been approved as qualifying for their special tax status by HM Revenue and Customs. A charity will be a qualifying institutional investor if it has satisfied the conditions set out in Part 1 of Schedule 6 to the Finance Act 2010. It is a common feature of the qualifying institutional investors listed that their status under UK tax law means they are exempt from tax on chargeable gains where they dispose of an asset directly.
22. New subparagraph (2) of paragraph 30A provides a power for the Treasury to make regulations to amend the list of qualifying institutional investors, by adding or removing a class of investor, or by imposing or varying conditions which must be met by any class of investor.
23. Subsection 6 updates the index in paragraph 31 to include reference to Exempt Unauthorized Unit Trusts and Qualifying Institutional Investor.
24. Subsection 7 of the clause is the commencement rule. The changes made by this measure apply to disposals of a substantial shareholding that occur on or after 1 April 2017.

Background note

25. The SSE was introduced in 2002 with the aim of eliminating the potential double taxation of trading profits in a company or sub-group being disposed of when these are realised by the shareholder by way of a disposal of their shareholding rather than, for example, by way of a dividend which would be exempted from tax in the hands of a corporate shareholder, and to facilitate the restructuring of groups without triggering a tax charge.
26. The government announced at Budget 2016 that it would consult over the summer of 2016 on a possible reform of SSE provisions. This consultation sought views on the extent to which the exemption could be simplified, made more certain, and how it could be updated to reflect changes to the domestic and international tax landscape since its introduction in 2002. The consultation also sought views on the impact SSE is having on the UK's competitiveness as a holding company location for global investors. The changes introduced by this clause represent the government's response to that part of that consultation.

27. The definition of Qualifying Institutional Investor in respect of Life Assurance Businesses in new subparagraph (1) of paragraph 30A has been updated from the draft published in March 2017 to ensure that the legislation works as intended.
28. Any comments should be addressed to Corey Herbertson at the following address:
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