Clause X: Depreciatory transactions within a group of companies

Summary

1. This clause extends the scope of section 176 Taxation of Chargeable Gains Act (TCGA) 1992. Section 176 limits the relief available to a company in respect of capital losses accruing on a disposal of shares by disallowing losses attributable to earlier ‘depreciatory transactions’ which materially reduced the value of the shares. The clause means that section 176 will apply where a depreciatory transaction has taken place at any time on or after 31 March 1982. This restores the time limit which applied to disposals made before 19 July 2011. The changes have effect for disposals on or after 22 November 2017, and also for some disposals treated as taking place before that date because a negligible value claim has been made.

Details of the clause

2. Subsection (1) amends subsection (1) of section 176 TCGA. It increases the period before a disposal within which a depreciatory transaction may occur with the result that the section may apply. The section will now apply where the value of the shares disposed of has been materially reduced by a depreciatory transaction effected at any time on or after 31 March 1982. The previous time limit of six years ending with the date of disposal ceases to apply.

3. Subsection (2) is the commencement rule.

4. Subsection 2(a) applies the change made by subsection (1) to disposals of shares on or after 22 November 2017.

5. Subsection 2(b) provides for the change also to apply to disposals treated as taking place before 22 November 2017 under the terms of a negligible value claim under S24 TCGA1992 made on or after 22 November 2017.

Background note

6. This clause seeks to ensure that the depreciatory transaction rules cannot be prevented from applying by simply holding on to a company from which value has been stripped for six years before claiming loss relief in excess of any genuine

economic loss to the group.

7. A loss accruing on the disposal of shares by a company may be increased by a prior "depreciatory transaction" which takes value out of the shares. Examples of depreciatory transactions are the payment of a dividend, or the transfer of an asset for payment of less than market value, by the company whose shares are disposed of. To counteract this increase in the loss, the rules in sections 176 and 177 TCGA were introduced in 1968 and apply, for the purposes of Corporation Tax, to restrict the allowable loss by such an amount as is "just and reasonable" to counter the effect of the depreciatory transaction.

8. Finance Act 2011 introduced a limit to when this restriction is made. For disposals on or after 19 July 2011 an adjustment is only required in respect of depreciatory transactions occurring within the six years prior to the date of disposal. This clause removes the limit introduced in 2011.

9. Where shares become of negligible value a claim can be made under section 24 TCGA to treat the shares as disposed of and reacquired, giving rise to a capital loss. Such a claim can specify an earlier date when the shares were of negligible value for the loss to accrue. Without the extension of the commencement provision by sub-section (2)(b), losses arising from claims made after 22 November 2017 could continue to benefit from the restricted six-year limit on depreciatory transactions by specifying a date before 22 November for the claim to take effect.