



The Law Society

## Simplification of the CGT Group Rules

### *Response of the Corporation Tax Sub-Committee of the Tax Law Committee of the Law Society of England and Wales*

#### Introduction

1. The Law Society is the representative body for over 140,000 solicitors in England and Wales. It negotiates on behalf of the profession, and lobbies regulators, Government and others.
2. We are pleased to have the opportunity to comment on the draft legislation dealing with value shifting and de-group charges published on 9 December 2010.
3. This response has been prepared on behalf of the Law Society by members of the Corporation Tax Sub-Committee. The Sub-Committee is made up of senior and specialist tax lawyers from across the country.
4. In general, we are in favour of the changes being made by these clauses, but had one or two drafting comments and additional suggestions. These are set out below.

#### Chargeable Gains: Value Shifting

5. We believe that the words “or securities” in the new section 31(6)(a) TCGA 1992 are redundant. Section 31(5) applies to a transaction which would, by virtue of section 29(2) TCGA 1992, be treated as a disposal of **shares** by a company, not shares or securities. Section 31(6) does not therefore need to refer to arrangements whereby the value of the shares *or securities* is materially reduced.
6. Section 29(2) actually refers to a person having control of a company exercising his control so that value passes out of shares in the company owned by him or out of rights over the company exercisable by him. For consistency with section 29(2), section 31(5) and (6) should refer to disposals of shares or rights and to arrangements whereby the value of the shares or rights is materially reduced.

#### Degrouping Charges

7. We believe that the interaction between Section 139 TCGA 1992 and Section 179(3C) remains unclear. We understand that the policy intention is that where, in the course of a reconstruction to which Section 139 applies, a company disposes of a subsidiary, no degrouping charge should arise in the subsidiary and the disposal should be treated as a no gain no loss disposal. The clearest way to clarify the interaction between the two provisions

might be to state in Section 139(1) that the no gain no loss treatment is “notwithstanding anything in Section 179(3C) TCGA 1992”.

8. We are not convinced that Section 139(1B) is required. It is not clear to us that Section 179(3C) would operate to increase the consideration received on a reconstruction: Section 179(3C) requires “any chargeable gain or allowable loss accruing to a company... on a group disposal” to be calculated in a certain way: where Section 139 applies, the transaction is treated as giving rise to neither a gain nor a loss so that there is no chargeable gain or allowable loss which needs to be calculated in any particular way.
9. We understand that HMRC consider that section 179(3A) TCGA does not apply to a share exchange which is treated by section 135 TCGA as not giving rise to a disposal. If a company is degrouped on a transaction in which the third party acquiror gives consideration both in the form of an issue of shares and a payment of cash, does section 179(3A) apply? Is this affected by the relative proportion of new shares and cash?”
10. We consider that Section 179(3A)(a)(i) should be extended to cover a disposal of shares *or securities that are not qualifying corporate bonds*. A company may be degrouped as a result of the sale of securities which are not normal commercial loans, because that sale may result in the subsidiary ceasing to be an effective 51% subsidiary of the principal company of the group. Providing that the securities are not qualifying corporate bonds (for corporation tax purposes), the mechanic in Section 179(3C) is capable of operating.
11. We find the reference to “the amount of share capital” in Section 179ZA(5)(a) confusing. Does “amount” refer to the nominal value or the market value? Does it include any share premium created on the issue of shares? What is the impact of merger relief? The draft guidance suggests that what is significant is whether the intra group asset transfer operated to increase the value of the subsidiary without an equivalent increase in base cost. We think it might be preferable to replace “to the matters” in Section 179ZA(4) with “in particular to the matter” and to delete Section 179ZA(5)(a).
12. We consider that Section 780(1)(d) of the Corporation Tax Act 2009 should be amended to reflect the amendment made to Section 179(1) TCGA 1992 by paragraph 3(2) of the new Schedule. In particular, Section 780(1)(d)(ii) should be repealed. Since the intangible fixed assets rules were based on the CGT group provisions, there is no policy reason for introducing a discrepancy between the two sets of rules.
13. We are concerned that, unless Section 780 of the Corporation Tax Act 2009 is amended, the new paragraph 15A Schedule 7AC TCGA 1992 will in practice only be of use where a divisionalised company wishing to hive down a trade to a new subsidiary which is then sold does not have valuable intangible fixed assets within Part 8 of the Corporation Tax Act 2009. The simplest way of dealing with this point might be to provide that Section 780(2) does not apply where the transferee ceases to be a member of the group in consequence of the disposal of shares in the transferee or another member of the group and one of the exemptions in Schedule 7AC TCGA 1992 applies to that disposal. This might be achieved by adding a new Section 780(1A) to read:

“This Section does not apply if the transferee ceases to be a member of the group in consequence of one or more relevant disposals of shares in the transferee or another member of the group.

(1B) For the purposes of subsection (1A), a disposal is a relevant disposal where:

(a) any gain or loss arising on the disposal is not a chargeable gain or allowable loss by virtue of Schedule 7AC of the Taxation of Chargeable Gains Act 1992; or

(b) if the Company making the disposal had been resident for tax purposes in the United Kingdom and a gain had arisen on the disposal that gain would not have been a chargeable gain by virtue of that Schedule.”

14. We consider that, as part of the present simplification of the degrouping charge legislation, the two company group practice referred to in “Special rule 5” of paragraph CG 45410 of the draft guidance should be legislated. Given the current programme to legislate concessions and practices of doubtful validity following the *Wilkinson* case, we consider that the practice should be embodied in legislation.

### **Contact details**

If you have any questions on these representations, please contact Chair of the Corporation Tax Sub-committee, Lydia Challen of Allen & Overy (tel: 020 3088 2753, e-mail: [lydia.challen@allenoverly.com](mailto:lydia.challen@allenoverly.com)).

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