

1 Restrictions on companies buying losses or gains: tax avoidance schemes

- (1) TCGA 1992 is amended as follows.
- (2) In section 184A(2) (losses accruing on disposals of pre-change assets not deductible from gains unless gains accrue on disposals of pre-change assets), omit “unless the gains accrue to the company on a disposal of a pre-change asset”.
- (3) In section 184B(2) (losses not deductible from gains accruing on disposals of pre-change assets unless losses accrue on disposals of pre-change assets), omit “unless the loss accrues to the company on a disposal of a pre-change asset”.
- (4) Section 70 of FA 2006 (which inserted sections 184A to 184F of TCGA 1992) is amended as follows.
- (5) In subsection (9) (special provision for qualifying changes of ownership and disposals before 5th December 2005) –
 - (a) for “The following subsection applies” substitute “Subsections (10) to (12) apply”,
 - (b) in paragraph (a), omit “or 184B”,
 - (c) in paragraph (c), for “at all subsequent times,” substitute “immediately afterwards, and”,
 - (d) omit paragraph (d) (together with the “and” following it), and
 - (e) in paragraph (e), omit “, or a qualifying gain for the purposes of section 184B of that Act,”.
- (6) For subsections (10) and (11) substitute –
 - “(10) Subsection (2) of that section has effect in relation to that qualifying loss subject to the following modifications.
 - (11) That subsection has effect as if there were inserted at the end of it “unless the gains accrue to the company on a disposal of a pre-change asset”.
 - (12) That subsection (modified as mentioned above) has effect as if the reference to a pre-change asset included an asset held before the relevant time by any company –
 - (a) which, immediately before that time, was a member of the same group of companies as the relevant company, and
 - (b) which, throughout the period beginning with that time and ending immediately after the making of the disposal referred to in that subsection, has remained under the control of the company which was the principal company of that group at the relevant time.
 - (13) Expressions which are used in subsections (9) to (12) have the same meaning as in sections 184A and 184C of TCGA 1992.”

- (7) The amendment made by subsection (2) has effect in relation to gains accruing on disposals made on or after 21st March 2007.
- (8) The amendment made by subsection (3) has effect in relation to losses accruing on disposals made on or after that day.
- (9) The amendments made by subsections (5) and (6) have effect in relation to disposals made on or after that day.

EXPLANATORY NOTE

**CLAUSE 1: RESTRICTIONS ON COMPANIES BUYING
LOSSES OR GAINS: TAX AVOIDANCE SCHEMES**

SUMMARY

1. This clause ensures that the rules in sections 184A and 184B Taxation of Chargeable Gains Act 1992 (TCGA) preventing companies buying and selling other companies in order to gain access to their capital losses or chargeable gains cannot be sidestepped by arrangements involving the sale of a company together with its subsidiary companies. It also makes consequential changes to section 70 of the Finance Act 2006 (FA 2006) to ensure that the amended rules that apply to certain changes of ownership before the Pre-Budget Report 2005 still apply following the amendments to sections 184A and 184B of TCGA, and simplifies the conditions attaching to that provision.
2. The details of the clause were announced at Budget 2007 and are effective from that date (21 March 2007).

DETAILS OF THE CLAUSE

3. Subsection (1) introduces the amendments to TCGA in subsections (2) and (3).
4. Subsection (2) amends the rule that determines the consequence of losses being identified as qualifying losses in section 184A(1) of TCGA. These qualifying losses are capital losses that have accrued to a company on assets it held prior to a change of ownership, and the main purpose, or one of the main purposes of that change of ownership was for the new owners to seek a tax advantage from the losses. Consequently the rule only applies in tax avoidance cases.
5. As a result of the amendment qualifying losses may now not be used to reduce any gains of the company or of any other company unless the conditions in section 70(9) of FA 2006 are met. Before this amendment, qualifying losses could be used to reduce gains on other assets the company held prior to its change of ownership, but not on assets acquired after the change of ownership.

6. The amendment is necessary to ensure that gains on assets acquired after the change of ownership by a subsidiary of the relevant company that are realised through the sale of the subsidiary's shares cannot be reduced by qualifying losses.
7. Subsection (3) makes an equivalent change to the rules affecting qualifying gains in section 184B.
8. Subsection (4) introduces the amendments to section 70 of FA 2006 in subsections (5) and (6). Section 70 of FA 2006 provides a less restrictive regime for the use of losses identified as qualifying losses under section 184A of TCGA, or gains identified as qualifying gains under section 184B of TCGA, where other conditions are satisfied. These conditions ensure that the transactions leading to the identification of the qualifying losses or gains were not part of loss or gain buying schemes. Typically these losses arise from deemed disposals on 'degrouing' transactions under section 179 of TCGA where a company left a chargeable gains group but remained under the control of the original parent company of that group where the degrouing occurred before 5 December 2005.
9. Subsection (5) simplifies the conditions that need to be met before the amended rules for the use of qualifying losses provided for in new subsections 70(10) to (13) of FA 2006 may be applied. The changes mean that relief can now be available where either the parent company of the original group is involved in a takeover or merger, or where the company holding those assets, or any other company that was in the same group as it prior to the de-grouping, is either sold or liquidated.
10. Subsection (6) introduces the consequential changes required to section 70 of FA 2006 so that it continues to provide the same relief as before the changes made by subsections (2) and (3) above. These revised rules will apply only to qualifying losses realised before 5 December 2005, and not to qualifying gains. This is because the latest accounting period of a company that can include a qualifying gain potentially affected by the rule will have ended in early December 2006, whereas qualifying losses may be carried forward for relief in future accounting periods.
11. New subsection 70(10) of FA 2006 modifies the rule in section 184A where it applies to cases identified by subsection (9) in accordance with new subsections (11) and (12).

12. New subsection 70(11) of FA 2006 ensures that section 184A(2) TCGA applies as it did before the change in subsection (2) above.
13. New subsection 70 (12) provides a relief that would not otherwise be available under section 184A(2). Qualifying losses may be set against gains accruing on pre-change assets held by any company that was a member of the group that the relevant company left, so long as the company that seeks to use the loss is still controlled by the parent company of that group.
14. New subsection 70(13) of FA 2006 ensures that the same meaning applies to words in this section as in sections 184A to 184C TCGA.
15. Subsections (7) to (9) provide the commencement rules for the changes introduced above in subsections (2) to (6). The new rules apply to disposals of pre-change assets occurring on or after 21 March 2007.

BACKGROUND NOTE

16. Sections 184A and 184B of TCGA provide targeted anti-avoidance rules designed to prevent groups of companies securing a tax advantage in situations where a company changes ownership and the main purpose, or one of the main purposes of the arrangements is that the new owners might gain access to capital losses or gains incurred by that company.
17. These rules operate by limiting the extent to which losses and gains can be offset in computing the amount of a company's total gains chargeable to corporation tax. Before this amendment, losses or gains on assets held before the change of ownership under these circumstances could only be set against gains or losses on other assets held by the same company, and not against assets held by the new owner's group companies, or other assets acquired after the change of ownership.
18. In practice this rule was unlikely to be applied very often since in the vast majority of such avoidance schemes, the company that changes ownership will either hold only an asset which would give rise to a qualifying loss or gain on disposal, or no assets at all if such a loss or gain has already been realised.

19. HM Revenue and Customs have become aware of schemes where this limited ability to offset a loss on a pre-change asset against a gain on another pre-change asset could be used to sidestep the intention of the rules in section 184A and 184B of TCGA. This involves arranging for the company which incurs a qualifying loss or gain to be sold with one or more subsidiary companies, whose shares would be pre-change assets. Once under the new ownership, the subsidiary then acquires other assets on which a gain or loss is expected to arise. When these assets are to be sold, the sale is effected through a sale of the subsidiary company's shares.
20. The changes introduced by this measure will prevent the offset of the loss and gain in those circumstances.