

## 1 Withdrawal of group relief

- (1) Part 1 of Schedule 7 to FA 2003 (group relief) is amended as follows.
- (2) In paragraph 3(5), for “paragraph 4” substitute “paragraphs 4 and 4ZA”.
- (3) In paragraph 4 (cases in which group relief not withdrawn) –
  - (a) omit sub-paragraphs (2) and (3), and
  - (b) in sub-paragraph (5), for “sub-paragraphs (3) and (4)” substitute “sub-paragraph (4)”.
- (4) After that paragraph insert –

*“Group relief not withdrawn where vendor leaves group*

- 4ZA (1) Group relief is not withdrawn under paragraph 3 where the purchaser ceases to be a member of the same group as the vendor because the vendor leaves the group.
  - (2) The vendor is regarded as leaving the group if the companies cease to be members of the same group by reason of a transaction relating to shares in –
    - (a) the vendor, or
    - (b) another company that –
      - (i) is above the vendor in the group structure, and
      - (ii) as a result of the transaction ceases to be a member of the same group as the purchaser.
  - (3) For the purpose of sub-paragraph (2) a company is “above” the vendor in the group structure if the vendor, or another company that is above the vendor in the group structure, is a 75% subsidiary of the company.
  - (4) But if there is a change in the control of the purchaser after the vendor leaves the group, paragraphs 3, 4(6) and (7), 5 and 6 have effect as if the purchaser had then ceased to be a member of the same group as the vendor.
  - (5) For the purposes of this paragraph there is a change in the control of the purchaser if –
    - (a) a person who controls the purchaser (alone or with others) ceases to do so,
    - (b) a person obtains control of the purchaser (alone or with others), or
    - (c) the purchaser is wound up.
  - (6) For the purposes of sub-paragraph (5), a person does not control, or obtain control of, the purchaser if that person is under the control of another person or other persons.
  - (7) In this paragraph references to “control” shall be interpreted in accordance with section 416 of the Taxes Act 1988 (subject to sub-paragraph (6)).”
- (5) In paragraph 4A(1) (withdrawal of group relief in certain cases involving successive transactions), in the words following paragraph (d), for “and 4” substitute “, 4 and 4ZA”.

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- (6) The amendments made by this section have effect –
    - (a) in relation to transactions with an effective date on or after 13 March 2008, and
    - (b) in relation to transactions with an effective date before that day if, on or after that day, there is a change in the control of the purchaser (subject to subsection (7)).
  - (7) The amendments made by this section do not have effect by virtue of subsection (6)(b) where the change of control takes place in pursuance of a contract entered into before 13 March 2008.
  - (8) Sub-paragraph (5) of paragraph 4ZA of Schedule 7 to FA 2003 (inserted by this section) has effect for the purposes of subsection (6)(b) as it has effect for the purposes of that paragraph.

**EXPLANATORY NOTES**

**CLAUSE [XX]: STAMP DUTY LAND TAX: WITHDRAWAL  
OF GROUP RELIEF.**

**SUMMARY**

1. Clause [XX] amends Part 1 of Schedule 7 to the Finance Act (FA) 2003 in order to prevent misuse of “clawback” relief in the legislation to allow avoidance of stamp duty land tax (SDLT).

**DETAILS OF THE CLAUSE**

2. Subsection (1) inserts amendments to Part 1 of Schedule 7 to FA 2003 as described at paragraphs 3 to 15 below.
3. Subsection (2) provides that in paragraph 3(5) of Schedule 7 to FA 2003 “paragraphs 4 and 4ZA” are substituted for “paragraph 4”.
4. Subsection (3) provides that in paragraph 4 (cases in which group relief not withdrawn) of Schedule 7 to FA 2003:
  - (a) sub-paragraphs (2) and (3) are omitted; and
  - (b) in sub-paragraph (5) “sub-paragraph (4)” is substituted for “sub-paragraphs (3) and (4)”.
5. Subsection (4) inserts a new sub-paragraph 4ZA after paragraph 4(4) of Schedule 7 to FA 2003 entitled

“group relief not withdrawn where vendor leaves group”.

6. New sub-paragraph 4ZA(1) provides that group relief is not withdrawn under paragraph 3 of Schedule 7 to FA 2003 where the purchaser ceases to be a member of the same group as the vendor because the vendor leaves the group.
7. New sub-paragraph 4ZA(2) provides that the vendor is regarded as leaving the group if the companies cease to be members of the same group by reason of a transaction relating to shares in:
  - (a) the vendor; or
  - (b) another company that:
    - (i) is above the vendor in the group structure; and
    - (ii) as a result of the transaction ceases to be a member of the same group as the purchaser.
8. New sub-paragraph 4ZA(3) provides that for the purposes of sub-paragraph (2) a company is “above” the vendor in the group structure if the vendor, or another company that is above the vendor in the group is a 75 per cent subsidiary of the company.
9. New sub-paragraph 4ZA (4) provides that if there is a change in the control of the purchaser after the

vendor leaves the group, then paragraphs 3, 4(6) and (7) and 6 of Schedule 7 to FA 2003 have effect as if the purchaser had then ceased to be a member of the same group as the vendor.

10. New sub-paragraph 4ZA (5) provides that, for the purposes of sub-paragraph (4) there is a change in the control of the purchaser if:
  - (a) a person who controls the purchaser (alone or with others) ceases to do so;
  - (b) a person obtains control of the purchaser alone or with others); or
  - (c) the purchaser is wound up.
11. New sub-paragraph 4ZA (6) provides that for the purposes of sub-paragraph (5), a person does not control, or obtain control of, the purchaser if that person is under the control of another person or other persons.
12. New sub-paragraph 4ZA (7) provides that in paragraph 4ZA references to “control” shall be interpreted in accordance with section 416 of the Income and Corporation Taxes Act 1988 (subject to new sub-paragraph 4ZA (6) of Schedule 7 to FA 2003).

13. Subsection 5 provides that in paragraph 4A(1) (withdrawal of group relief in certain cases involving successive transactions) of Schedule 7 to FA 2003, in the words following paragraph (d) “4 and 4ZA” should be substituted for “and 4”.
14. Subsection 6 provides that the amendments made to Part 1 of Schedule 7 to FA 2003 have effect:
- (a) in relation to transactions with an effective date on or after 13 March 2008; and
  - (b) (subject to subsection (7) in relation to transactions with an effective date before that day if, on or after that day, there is a change in the control of the purchaser (within the meaning of paragraph 4ZA(5) of Schedule 7 to FA 2003, inserted by this section).
15. Subsection 7 provides that paragraphs 4ZA(5) of Schedule 7 to FA 2003 has effect for the purposes of subsection (6) (b) that is, in relation to transactions with an effective date before that day if, on or after that day, there is a change in the control of the purchaser (see paragraph 14 above) as it has effect for the purposes of that paragraph.

#### **BACKGROUND NOTE**

16. Paragraph 1 of Schedule 7 to FA 2003 allows companies to claim group relief on transfers of assets between group members. A restriction is placed on

the relief where a property is transferred to a group company and the purchaser then ceases to be a member of the same group as the vendor. HMRC can then “claw back” any group relief.

17. A number of avoidance schemes were identified which were structured in such a way as to avoid the “clawback” provisions in FA 2003. The transactions were structured in so that it is the vendor who leaves the group first, thereby allowing the purchasing company to subsequently leave the group without there being any “clawback” of SDLT group relief.
18. The amendments to part 1 of Schedule 7 to FA 2003 will apply where the vendor leaves the group and there is then a subsequent change in the control of the purchaser within a period of three years of the asset having been transferred. The provision enables HM revenue and customs to link these two events and treat the purchaser as having left the group first. Group relief will not be clawed back where only the vendor leaves the group.