

# Bill 6

---

---

## CONTENTS

### PART 5

#### GROUP RELIEF

##### CHAPTER 1

###### OVERVIEW

- 1 Overview of Part [j4800rm]

##### CHAPTER 2

#### SURRENDER OF COMPANY'S LOSSES ETC FOR AN ACCOUNTING PERIOD

###### *Overview*

- 2 Overview of Chapter [j4801Brm]

###### *Basic provisions about surrendering losses and other amounts*

- 3 Surrendering of losses and other amounts [j4801rm]
- 4 Meaning of "trading loss" [j4805rm]
- 5 Meaning of "capital allowance excess" [j4806rm]
- 6 Meaning of "UK property business loss" [j4809rm]
- 7 Meaning of "management expenses" [j4810rm]
- 8 Meaning of "non-trading loss on intangible fixed assets" [j4811rm]

###### *Restrictions on losses and other amounts that may be surrendered*

- 9 Restriction on surrender of losses etc within section 3(1)(d) to (g) [j4812rm]
- 10 Restriction on losses etc that may be surrendered by UK resident [j4808Arm]
- 11 Restriction on losses etc that may be surrendered by non-UK resident [j4808rm]
- 12 Meaning of "non-UK profits" [j4808Brm]
- 13 Restriction on losses etc that may be surrendered by dual resident [j4813rm]

### CHAPTER 3

#### SURRENDER OF LOSSES ETC BY NON-UK RESIDENT COMPANY CONNECTED WITH THE EEA

##### *Overview etc*

- 14 Overview of Chapter [j4840rm]
- 15 EEA related definitions [j4840Arm]

##### *Basic provisions about surrendering losses and other amounts*

- 16 Steps to be taken in determining extent to which loss etc can be surrendered [j4841Arm]
- 17 Surrendering of losses and other amounts [j4841rm]

##### *Conditions that must be met*

- 18 The equivalence condition [j4843rm]
- 19 The EEA tax loss condition: companies resident in EEA territory [j4844rm]
- 20 The EEA tax loss condition: companies not resident in EEA territory [j4845rm]
- 21 The qualifying loss condition: general [j4846rm]
- 22 The qualifying loss condition: relief for EEA accounting period and previous periods [j4847rm]
- 23 The qualifying loss condition: relief for future periods [j4848rm]
- 24 The qualifying loss condition: other relief [j4849rm]
- 25 The precedence condition [j4850rm]

##### *Other rules, assumptions and exclusions*

- 26 Rules for recalculating EEA amount [j4851rm]
- 27 Assumptions to be made in recalculating EEA amount [j4852rm]
- 28 Assumptions as to UK residence [j4853rm]
- 29 Assumptions as to places in which activities carried on [j4854rm]
- 30 Assumed accounting periods [j4855rm]
- 31 Assumptions in relation to capital allowances [j4856rm]
- 32 Amounts excluded from group relief because of certain arrangements [j4842Brm]

### CHAPTER 4

#### CLAIMS FOR GROUP RELIEF

##### *Overview*

- 33 Overview of Chapter [j4804rm]

##### *Surrenderable amounts under Chapter 2*

- 34 Group relief claims in relation to surrenderable amounts under Chapter 2 [j4801Arm]
- 35 The group condition [j4802rm]
- 36 Consortium condition 1 [j4802Arm]
- 37 Consortium conditions 2 and 3 [j4802Crm]
- 38 Meaning of “UK related” company [j4802Erm]

*Surrenderable amounts under Chapter 3*

- 39 Group relief claims for surrenderable amounts under Chapter 3 [j4842rm]  
40 The EEA group condition [j4842Crm]

*Giving of group relief*

- 41 Deduction in calculating claimant company's net profits [j4842Arm]

*General limitation on amount of group relief to be given*

- 42 Limitation on amount of group relief applying to all claims [j4803rm]  
43 Usable part of the surrenderable amounts [j4803Arm]  
44 Usable part of claimant company's total profits of the claim period [j4803Brm]  
45 Supplementary provision for the purposes of sections 43 and 44 [j4803Crm]  
46 Meaning of "the overlapping period" [j4803AArm]

*Limitations on group relief if claim based on consortium condition 1, 2 or 3*

- 47 Consortium condition 1: limitation if surrendering company owned by consortium [j4807rm]  
48 Consortium condition 1: limitation if claimant company owned by consortium [j4807AArm]  
49 Consortium conditions 2 and 3: limitations in sections 47 and 48 to apply [j4807Arm]  
50 Consortium conditions 2 and 3: overall limitation on relief for claims made by companies in link company's group [j4807ACrm]  
51 Consortium conditions 1 and 2: limitation on relief if surrenderable amounts include trading loss [j4807Brm]  
52 Consortium conditions 1 and 2: limitation on relief if surrendering company is in a group of companies [j4814rm]  
53 Consortium conditions 1 and 3: limitation on relief if claimant company is in a group of companies [j4815rm]

**CHAPTER 5**

## SUBSIDIARIES, GROUPS AND CONSORTIUMS

*Overview etc*

- 54 Overview of Chapter etc [j4800Grm]

*Explanations of terms*

- 55 Meaning of "75% subsidiary" and "90% subsidiary" [j4800Brm]  
56 Groups of companies [j4800Crm]  
57 Companies owned by consortiums and members of consortiums [j4800Drms]

*Arrangements for transfers of companies*

- 58 Arrangements for transfer of member of group of companies etc [j4816rm]  
59 Arrangements for transfer of company owned by consortium etc [j4817rm]  
60 Supplementary provision for the purposes of sections 58 and 59 [j4818rm]

## CHAPTER 6

### EQUITY HOLDERS AND PROFITS AND ASSETS AVAILABLE FOR DISTRIBUTION

#### *Overview etc*

- 61 Overview of Chapter etc [j4819rm]

#### *Equity holders*

- 62 Meaning of “equity holder” [j4820rm]  
63 Use of relevant company’s assets [j4820Arm]  
64 Meaning of “ordinary shares” [j4821rm]  
65 Meaning of “normal commercial loan” [j4822rm]  
66 Normal commercial loans: interest depending on company’s results or value of assets [j4822Arm]  
67 Supplementary provision for the purposes of sections 64 and 65 [j4823rm]

#### *Company’s entitlement to profits or assets available for distribution: basic provisions*

- 68 Proportion of profits available for distribution to which company is entitled [j4824rm]  
69 Proportion of assets available for distribution to which company is entitled [j4825rm]  
70 Profit and assets available for distribution and company’s entitlement: supplementary [j4807ABrm]  
71 Meaning of “the relevant time” and “the relevant accounting period” [j4819Arm]

#### *Company’s entitlement to profits or assets available for distribution: supplementary*

- 72 Application of sections 73 to 85 etc [j4825Arm]  
73 Shares or securities with limited rights [j4826rm]  
74 Shares or securities with temporary rights [j4827rm]  
75 Determining company A’s proportion if there are shares etc with temporary rights [j4828rm]  
76 Cases in which option arrangements are in place [j4831rm]  
77 Determining company A’s proportion if option arrangements in place [j4830rm]  
78 Cases in which both sections 73 and 75 apply [j4829rm]  
79 Cases in which both sections 73 and 77 apply [j4832rm]  
80 Cases in which both sections 75 and 77 apply [j4833rm]  
81 Cases in which sections 73, 75 and 77 all apply [j4834rm]  
82 Cases in which surrendering or claimant company is non-UK resident [j4835rm]  
83 Determining company A’s proportion if non-UK resident involved [j4836rm]  
84 Assumptions to be applied if non-UK resident company involved [j4837rm]  
85 Assets etc referable to UK trade [j4838rm]

**CHAPTER 7**

## DEFINITIONS AND MISCELLANEOUS PROVISIONS

*Definitions*

- 86 Meaning of “double taxation exempt” activities [j4808Crm]
- 87 Meaning of “non-UK tax” [j4808Drm]
- 88 Other definitions that apply for the purposes of the Part [j4800Arm]

*Miscellaneous*

- 89 Payments for group relief [j4800Erm]
- 90 References to “allowance” in CAA 2001 [j4800Frm]

## PART 5

### GROUP RELIEF

#### CHAPTER 1

##### OVERVIEW

### 1 Overview of Part [j4800rm]

- (1) This Part –
  - (a) allows a company to surrender losses and other amounts, and
  - (b) provides for other companies to be given, on claims made by them, corporation tax relief for the losses and other amounts that are surrendered,in certain cases involving groups or consortiums of companies.  
*Origin: Drafting.*
- (2) The relief mentioned in subsection (1)(b) is called “group relief”.  
*Origin: Drafting.*
- (3) Chapter 2 allows a company to surrender losses and other amounts it has for an accounting period.  
*Origin: Drafting.*
- (4) Chapter 3 allows a non-UK resident company that is resident or carrying on a trade in the European Economic Area to surrender losses and other amounts it has for a period.  
*Origin: Drafting.*
- (5) Chapter 4 sets out how a company may claim group relief, how group relief is given and limitations on the amount of group relief to be given on a claim.  
*Origin: Drafting.*
- (6) Chapter 5 explains how to determine if a company –
  - (a) is a 75% subsidiary of another company,
  - (b) is a member of a group of companies,
  - (c) is owned by a consortium, or
  - (d) is a member of a consortium.*Origin: Drafting.*
- (7) Chapter 6 applies for the purposes of sections 47(3)(b) and (c) and 48(3)(b) and (c) (which are in Chapter 4) and section 55(6)(a) and (b) (which is in Chapter 5)

and contains provision about persons holding equity in companies and about distributions of companies' profits and assets.

*Origin: Drafting.*

- (8) Chapter 7 contains definitions that apply for the purposes of this Part and miscellaneous provisions.

*Origin: Drafting.*

- (9) Part 8 of Schedule 18 to FA 1998 contains provision about claims for group relief.

*Origin: ICTA s.412(1).*

- (10) Paragraph 76 of that Schedule provides for assessments or other adjustments if group relief has been given which is or has become excessive.

*Origin: ICTA s.412(2).*

## CHAPTER 2

### SURRENDER OF COMPANY'S LOSSES ETC FOR AN ACCOUNTING PERIOD

#### *Overview*

## 2 Overview of Chapter [j4801Brm]

- (1) This Chapter allows a company to surrender losses and other amounts it has for an accounting period.

*Origin: Drafting.*

- (2) Sections 3 to 8 set out the basic provisions about the surrendering of losses and other amounts.

*Origin: Drafting.*

- (3) Sections 9 to 13 place restrictions on the surrendering of losses and other amounts.

*Origin: Drafting.*

#### *Basic provisions about surrendering losses and other amounts*

## 3 Surrendering of losses and other amounts [j4801rm]

- (1) This section applies if a company ("the surrendering company") has one or more of the following for an accounting period ("the surrender period") –
- (a) a trading loss (see section 4),
  - (b) a capital allowance excess (see section 5),
  - (c) a deficit within [section 83 of FA 1996],
  - (d) charges on income within [section 338A of ICTA],
  - (e) a UK property business loss (see section 6),
  - (f) management expenses (see section 7), and
  - (g) a non-trading loss on intangible fixed assets (see section 8).

Origin: ICTA s.402(2), (3A), (3B), s.403(1), s.403ZC, s.403ZD(2).

- (2) The surrendering company may surrender the losses and other amounts under this Chapter so far as the losses and other amounts are eligible for corporation tax relief (apart from this Part).

Origin: ICTA s.402(1); drafting.

- (3) Subsection (2) applies in relation to losses and other amounts within subsection (1)(a) to (c) even if the surrendering company has other income and chargeable gains in the surrender period from which the losses and other amounts could be deducted.

Origin: ICTA s.6(4), s. 403(2).

- (4) But so far as losses and other amounts are within subsection (1)(d) to (g), subsection (2) is subject to the restriction in section 9.

Origin: ICTA s.403(3); drafting.

- (5) Subsection (2) is also subject to—
- (a) sections 10 to 13 (which place further restrictions on what the surrendering company may surrender),
  - (b) [section 785ZA of ICTA], and
  - (c) [paragraph 38 of Schedule 10 to FA 2006].

Origin: ICTA s.403(4); drafting.

- (6) So far as they may be surrendered, losses and other amounts are called “surrenderable amounts”.

Origin: Drafting.

- (7) The surrendering company surrenders its surrenderable amounts for the surrender period (in whole or in part) by consenting to one or more claims for group relief in relation to the amounts (see Requirement 1 in section 34).

Origin: FA 1998 Sch.18 para.70(1); drafting.

#### 4 Meaning of “trading loss” [j4805rm]

- (1) In section 3(1)(a) “trading loss” means a loss made in a trade in the surrender period.

Origin: ICTA s.403ZA(1).

- (2) But it does not include—
- (a) a loss made in a trade carried on wholly outside the United Kingdom, or
  - (b) a loss that is not eligible for relief under [section {j4505rm}] as a result of [section {j4507rm} or {j4508rm}].

Origin: ICTA s.403ZA(2).

#### 5 Meaning of “capital allowance excess” [j4806rm]

- (1) In section 3(1)(b) “capital allowance excess” means an excess of the kind mentioned in section 260(1) of CAA 2001 for the surrender period.

Origin: ICTA s.403ZB(1), (2).

- (2) In determining if there is such an excess for the surrender period and, if there is, its amount, apply section 260(1) of CAA 2001 subject to subsections (3) and (4).

Origin: Drafting.

- (3) Ignore capital allowances brought forward from previous accounting periods.

Origin: ICTA s.403ZB(2).

- (4) The reference in section 260(1) to the company's income is to be read as a reference to the company's income before deductions for –
- (a) losses of any accounting period other than the surrender period, or
  - (b) capital allowances.

Origin: ICTA s.403ZB(3); drafting.

## 6 Meaning of “UK property business loss” [j4809rm]

- (1) In section 3(1)(e) “UK property business loss” means a loss made in a UK property business in the surrender period.

Origin: ICTA s.403ZD(3).

- (2) But it does not include a loss treated as made in the surrender period as a result of [section {j4101rm}(5)].

Origin: ICTA s.403ZD(3).

## 7 Meaning of “management expenses” [j4810rm]

- (1) In section 3(1)(f) “management expenses” means expenses that are deductible for the surrender period under [section 75(1) of ICTA].

Origin: ICTA s.403(1), s.403ZD(4).

- (2) But it does not include –
- (a) expenses that are deductible for the surrender period as a result of [section 75(9) of ICTA], or
  - (b) amounts treated as expenses deductible for the surrender period as a result of [section {j4101Arm}(2)].

Origin: ICTA s.403ZD(4).

## 8 Meaning of “non-trading loss on intangible fixed assets” [j4811rm]

- (1) In section 3(1)(g) “non-trading loss on intangible fixed assets” is to be read in accordance with [Schedule 29 to FA 2002].

Origin: ICTA s.403(1), s.403ZD(6).

- (2) But so much of such a loss as is made up of an amount brought forward under [paragraph 35(3) of that Schedule] is excluded from the scope of section 3(1)(g).

Origin: ICTA s.403ZD(6).

*Restrictions on losses and other amounts that may be surrendered*

**9 Restriction on surrender of losses etc within section 3(1)(d) to (g) [j4812rm]**

- (1) This section applies if the surrendering company has for the surrender period losses or other amounts within section 3(1)(d) to (g) (“the relevant amounts”) that are eligible for corporation tax relief (apart from this Part).

Origin: ICTA s.403(3).

- (2) The surrendering company may not surrender any relevant amount under this Chapter unless amount A exceeds amount B.

Origin: ICTA s.403(3).

- (3) If amount A exceeds amount B—  
(a) the surrendering company may surrender relevant amounts, but  
(b) the total amount that may be surrendered is limited to the amount by which amount A exceeds amount B.

Origin: ICTA s.403(3).

- (4) If the surrendering company surrenders relevant amounts, the amount surrendered is treated as consisting of—  
(a) first, charges within section 3(1)(d),  
(b) second, loss within section 3(1)(e),  
(c) third, expenses within section 3(1)(f), and  
(d) fourth, loss within section 3(1)(g).

Origin: ICTA s.403(3).

- (5) Amount A is the total of the relevant amounts.

Origin: ICTA s.403(3).

- (6) Amount B is the surrendering company’s total profits of the surrender period.

Origin: ICTA s.403ZE(1).

- (7) Subsection (6) is subject to [section 494A of ICTA].

Origin: ICTA s.403(4).

**10 Restriction on losses etc that may be surrendered by UK resident [j4808Arm]**

- (1) This section applies if the surrendering company is UK resident.

Origin: ICTA s.403E(1).

- (2) The surrendering company may not surrender a loss or other amount under this Chapter so far as the loss or other amount—  
(a) is attributable to a permanent establishment through which the company carries on a trade outside the United Kingdom (see subsection (3)), and  
(b) is, or represents, an amount within subsection (5).

Origin: ICTA s.403E(1), (6).

- (3) A loss or other amount is attributable to a permanent establishment of the surrendering company if (ignoring this section) the amount could be included in the company's surrenderable amounts for the surrender period if those amounts were determined –
- (a) by reference to that establishment alone, and
  - (b) by applying, in relation to that establishment, principles corresponding in all material respects to those mentioned in subsection (4).

Origin: ICTA s.403E(4).

- (4) The principles are those that would be applied for corporation tax purposes in determining an equivalent loss or other amount in the case of a permanent establishment through which a non-UK resident company carries on a trade in the United Kingdom.

Origin: ICTA s.403E(4), (5).

- (5) An amount is within this subsection if, for the purposes of non-UK tax chargeable under the law of the territory in which the permanent establishment is situated (see section 87), the amount is (in any period) deductible from or otherwise allowable against non-UK profits of a person other than the surrendering company (see section 12).

Origin: ICTA s.403E(2).

- (6) Subsections (7) and (8) apply for the purposes of subsection (5) if, in order to determine if an amount is deductible or otherwise allowable for the purposes of non-UK tax chargeable under the law of a territory, it is necessary, in accordance with that law, to know if the amount or a corresponding amount is deductible or otherwise allowable for tax purposes in the United Kingdom.

Origin: ICTA s.403E(8).

- (7) If the surrendering company is treated as resident in the territory for the purposes of the non-UK tax, apply the law of the territory as if it did not matter if the amount or a corresponding amount is deductible or otherwise allowable for tax purposes in the United Kingdom.

Origin: ICTA s.403E(8).

- (8) If the surrendering company is not so treated, then the amount is not within subsection (5).

Origin: ICTA s.403E(8).

- (9) This section does not apply in relation to a loss or other amount that is referable to life assurance business (within the meaning of [Chapter 1 of Part 12 of ICTA]) carried on by the surrendering company.

Origin: ICTA s.403E(3).

## 11 **Restriction on losses etc that may be surrendered by non-UK resident** **[j4808rm]**

- (1) This section applies if the surrendering company is a non-UK resident company carrying on a trade in the United Kingdom through a permanent establishment.

Origin: ICTA s.403D(1).

- (2) The surrendering company may surrender a loss or other amount under this Chapter only so far as conditions A to C are met in relation to the loss or other amount.

Origin: ICTA s.403D(1).

- (3) Condition A is that the loss or other amount is attributable to activities of the surrendering company in respect of which it is within the charge to corporation tax for the surrender period.

Origin: ICTA s.403D(1).

- (4) Condition B is that the loss or other amount is not attributable to activities of the surrendering company that are double taxation exempt for the surrender period (see section 86).

Origin: ICTA s.403D(1).

- (5) Condition C is that –

- (a) the loss or other amount does not correspond to, and is not represented in, an amount within subsection (6), and
- (b) no amount brought into account in calculating the loss or other amount corresponds to, or is represented in, an amount within subsection (6).

Origin: ICTA s.403D(1).

- (6) An amount is within this subsection if, for the purposes of non-UK tax chargeable under the law of a territory (see section 87), the amount is (in any period) deductible from or otherwise allowable against non-UK profits of any person (see section 12).

Origin: ICTA s.403D(1).

- (7) But an amount is not within subsection (6) just because it is –

- (a) an amount of profits brought into account for the purpose of being excluded from non-UK profits of the person, or
- (b) an amount brought into account in calculating an amount of profits brought into account as mentioned in paragraph (a).

Origin: ICTA s.403D(5).

- (8) Subsection (9) applies for the purposes of subsection (6) if, in order to determine if an amount is deductible or otherwise allowable for the purposes of non-UK tax chargeable under the law of a territory, it is necessary, in accordance with that law, to know if the amount or a corresponding amount is deductible or otherwise allowable for tax purposes in the United Kingdom.

Origin: ICTA s.403D(6).

- (9) Apply that law as if it did not matter if the amount or a corresponding amount is deductible or otherwise allowable for tax purposes in the United Kingdom.

Origin: ICTA s.403D(6).

## 12 Meaning of “non-UK profits” [j4808Brm]

- (1) In sections 10 and 11 “non-UK profits”, in relation to a person, means –
- (a) amounts within subsection (2), or

- (b) amounts taken into account in calculating amounts within subsection (2).

Origin: ICTA s.403D(3), s.403E(7).

- (2) Amounts are within this subsection if they –
  - (a) are taken for the purposes of the non-UK tax in question to be the amount of the profits, income or gains on which (after allowing for deductions) the person is charged with that tax, and
  - (b) are not amounts corresponding to, and are not represented in, the total profits of any person of any accounting period.

Origin: ICTA s.403D(3), s.403E(7).

- (3) For the purposes of subsection (2)(b) amounts that arise from activities of a non-UK resident company that are double taxation exempt for an accounting period (see section 86) are excluded from the company's total profits of that period.

Origin: ICTA s.403D(2), (4), s.403E(7).

### 13 Restriction on losses etc that may be surrendered by dual resident [j4813rm]

- (1) This section applies if in the surrender period the surrendering company –
  - (a) is UK resident, and
  - (b) is also within a charge to non-UK tax under the law of a territory (see section 87) because –
    - (i) it derives its status as a company from that law,
    - (ii) its place of management is in that territory, or
    - (iii) it is for some other reason treated as resident in that territory for the purposes of that tax.

Origin: ICTA s.404(1), (2), (4); drafting.

- (2) If condition A, B or C is met, the surrendering company may not surrender any losses or other amounts under this Chapter.

Origin: ICTA s.404(1).

- (3) Condition A is that the surrendering company is not a trading company throughout the surrender period.

“Trading company” means a company the business of which consists wholly or mainly in the carrying on of a trade or trades.

Origin: ICTA s.404(5); s.413(3).

- (4) Condition B is that in the surrender period the surrendering company carries on a trade of such a description that the company's main function, or one of its main functions, consists of one or more of the following activities.

#### *Activity 1*

Acquiring and holding investments (whether directly or indirectly).

#### *Activity 2*

Making payments under loan relationships in relation to which debits fall to be brought into account for the purposes of [Chapter 2 of Part 4 of FA 1996].

*Activity 3*

Making payments which, by virtue of an enactment, are charges on income for corporation tax purposes.

*Activity 4*

Making payments similar to those within Activity 3 but which are deductible in calculating the total and net profits of the surrendering company for corporation tax purposes.

*Activity 5*

Obtaining funds for the purposes of, or otherwise in connection with, any of Activities 1 to 4.

[Origin: ICTA s.404\(6\).](#)

- (5) Condition C is that in the surrender period the surrendering company carries on one or more of Activities 1 to 5—
- (a) to an extent that does not appear to be justified by any trade which it carries on, or
  - (b) for a purpose that does not appear to be appropriate to any such trade.

[Origin: ICTA s.404\(6\).](#)

### CHAPTER 3

#### SURRENDER OF LOSSES ETC BY NON-UK RESIDENT COMPANY CONNECTED WITH THE EEA

##### *Overview etc*

#### 14 Overview of Chapter [\[j4840rm\]](#)

- (1) This Chapter allows a non-UK resident company that is resident or carrying on a trade in the European Economic Area to surrender losses and other amounts it has for a period.

[Origin: Drafting.](#)

- (2) Sections 16 and 17 set out the basic provisions about the surrendering of losses and other amounts.

[Origin: Drafting.](#)

- (3) Sections 18 to 25 set out conditions that must be met if losses and other amounts are to be surrendered (see Step 2 in section 16).

[Origin: Drafting.](#)

- (4) Sections 26 to 32 set out other rules, assumptions and exclusions (see Steps 3 and 5 in section 16).

[Origin: Drafting.](#)

#### 15 EEA related definitions [\[j4840Arm\]](#)

In this Chapter –

“the EEA accounting period” has the meaning given by section 16(1),

“the EEA amount” has the meaning given by section 16(1) (but see Step 1 in section 16(2)),

“EEA related company” means a non-UK resident company that –

- (a) is resident in an EEA territory, or
- (b) is not resident in any EEA territory but is carrying on a trade in an EEA territory through a permanent establishment,

“EEA territory”, in relation to any time, means a territory outside the United Kingdom that is within the European Economic Area at that time, and

“the relevant EEA territory”, in relation to the surrendering company, means –

- (a) the EEA territory in which the surrendering company is resident, or
- (b) if the surrendering company is not resident in any EEA territory, the EEA territory in which it carries on a trade through a permanent establishment.

Origin: ICTA s.402(2A), (2B), Sch.18A paras.3(1), 4(1), 5(1), 9(5), 10(1), (2).

*Basic provisions about surrendering losses and other amounts*

**16 Steps to be taken in determining extent to which loss etc can be surrendered**  
[j4841Arm]

- (1) This section applies if an EEA related company (“the surrendering company”) has a loss or other amount (“the EEA amount”) for a period (“the EEA accounting period”).
- (2) Take the following steps to determine the extent to which the surrendering company may surrender the EEA amount under this Chapter.

*Step 1*

Determine the extent to which (if at all) the EEA amount is eligible for corporation tax relief (apart from this Part).

The EEA amount may be surrendered only so far as it is not so eligible.

In the following provisions of this Chapter references to the EEA amount are references to the EEA amount only so far as it may be surrendered in accordance with this step.

*Step 2*

Determine the extent to which the EEA amount meets –

- (a) the equivalence condition (see section 18),
- (b) the EEA tax loss condition (see sections 19 and 20),
- (c) the qualifying loss condition (see sections 21 to 24), and
- (d) the precedence condition (see section 25).

References to “the qualifying part of the EEA amount” are references to the EEA amount so far as it meets all those conditions.

*Step 3*

Recalculate the EEA amount in accordance with section 26 using the assumptions set out in sections 27 to 31.

The result is called “the recalculated EEA amount”.

*Step 4*

Determine the amount that may be surrendered.

That amount is –

- (a) the qualifying part of the EEA amount, or
- (b) if less, an amount equal to the relevant proportion of the recalculated EEA amount.

If the recalculated EEA amount is an amount of income or other profits, the amount that may be surrendered is nil.

“The relevant proportion” is the same as the proportion that the qualifying part of the EEA amount bears to the EEA amount.

*Step 5*

Determine the extent to which (if at all) the amount resulting from Step 4 is excluded by section 32.

If any of that amount is excluded, reduce it accordingly.

*Origin:* ICTA s.402(1), s.403F(2), (5), Sch.18A para.11(1), (2), (3), (5); drafting.

**17 Surrendering of losses and other amounts [j4841rm]**

- (1) This section applies if the surrendering company has for an assumed accounting period (“the surrender period”) losses or other amounts (“surrenderable amounts”) that it may surrender under this Chapter.

*Origin:* ICTA s.402(1), (2), Sch.18A para.11(4); drafting.

- (2) The surrendering company surrenders its surrenderable amounts for the surrender period (in whole or in part) by consenting to one or more claims for group relief in relation to the amounts (see Requirement 1 in section 39).

*Origin:* FA 1998 Sch.18 para.70(1); drafting.

- (3) “Assumed accounting period”, in relation to a loss or other amount that may be surrendered by the surrendering company, means the assumed accounting period in which the loss or other amount falls in accordance with the recalculation required at Step 3 in section 16.

*Origin:* ICTA Sch.18A para.11(4); drafting.

*Conditions that must be met***18 The equivalence condition [j4843rm]**

The EEA amount meets the equivalence condition so far as it corresponds (in all material respects) to a loss or other amount within section 3(1)(a) to (g).

*Origin:* ICTA Sch.18A para.2.

**19 The EEA tax loss condition: companies resident in EEA territory [j4844rm]**

- (1) This section applies if the surrendering company is resident in the relevant EEA territory.

*Origin:* ICTA Sch.18A para.3(1).

- (2) The EEA amount meets the EEA tax loss condition so far as –

- (a) subsection (3) applies to it, and
- (b) it is not excluded by subsection (5).

Origin: ICTA Sch.18A para.3(1).

- (3) This subsection applies to the EEA amount so far as it is calculated in accordance with the rules under the law of the relevant EEA territory mentioned in subsection (4).

Origin: ICTA Sch.18A para.3(2).

- (4) Those rules are those applicable for determining, in the surrendering company's case, the amount of any loss or other amount eligible for relief from any non-UK tax chargeable under the law of the relevant EEA territory (see section 87).

Origin: ICTA Sch.18A para.3(2).

- (5) The EEA amount is excluded so far as, for corporation tax purposes, it is attributable to a permanent establishment through which the surrendering company carries on a trade in the United Kingdom.

Origin: ICTA Sch.18A para.3(3).

## 20 The EEA tax loss condition: companies not resident in EEA territory [j4845rm]

- (1) This section applies if the surrendering company is not resident in any EEA territory but is carrying on a trade in an EEA territory through a permanent establishment.

Origin: ICTA Sch.18A para.4(1).

- (2) The EEA amount meets the EEA tax loss condition so far as –
  - (a) subsection (3) applies to it, and
  - (b) it is not excluded by subsection (5).

Origin: ICTA Sch.18A para.4(1).

- (3) This subsection applies to the EEA amount so far as it is calculated in accordance with the rules under the law of the relevant EEA territory mentioned in subsection (4).

Origin: ICTA Sch.18A para.4(2).

- (4) Those rules are those applicable for determining, in the surrendering company's case, the amount of any loss or other amount eligible for relief from any non-UK tax chargeable under the law of the relevant EEA territory (see section 87).

Origin: ICTA Sch.18A para.4(2).

- (5) The EEA amount is excluded so far as it is attributable to activities of the surrendering company that are subject to relieving arrangements.

Origin: ICTA Sch.18A para.4(3).

- (6) “Relieving arrangements” means arrangements within subsection (7) that have the effect mentioned in subsection (8) (or would have that effect if a claim were made).

Origin: ICTA Sch.18A para.4(4).

- (7) Arrangements are within this subsection if they are made with a view to affording relief from double taxation in relation to –
- (a) any non-UK tax chargeable under the law of the relevant EEA territory and any non-UK tax chargeable under the law of any other territory, or
  - (b) any non-UK tax chargeable under the law of the relevant EEA territory and United Kingdom income or corporation tax.

Origin: ICTA Sch.18A para.4(6).

- (8) The effect referred to in subsection (6) is that the income or gains arising for the EEA accounting period from the activities are ignored in calculating the surrendering company's profits, income or gains chargeable to non-UK tax under the law of the relevant EEA territory for that period.

Origin: ICTA Sch.18A para.4(5).

## 21 The qualifying loss condition: general [j4846rm]

- (1) The EEA amount meets the qualifying loss condition so far as all of sections 22 to 24 apply to it.

Origin: ICTA Sch.18A para.5(2).

- (2) In sections 22 and 23 “relevant non-UK tax” means any non-UK tax (see section 87) chargeable under the law of the relevant EEA territory or any other relevant territory.

Origin: ICTA Sch.18A paras.6(2), 7(2).

- (3) “Other relevant territory” means –
- (a) if the surrendering company is resident in the relevant EEA territory and is also resident in another territory, that other territory, or
  - (b) if the surrendering company is not resident in any EEA territory, the territory (or territories) in which it is resident.

Origin: ICTA Sch.18A paras.6(5), 7(5).

## 22 The qualifying loss condition: relief for EEA accounting period and previous periods [j4847rm]

- (1) This section applies to the EEA amount so far as subsections (2) and (3) apply to it.  
This is subject to subsection (4).

Origin: ICTA Sch.18A para.6(1); drafting.

- (2) This subsection applies to the EEA amount so far as, for the purposes of any relevant non-UK tax, the EEA amount cannot be taken into account in calculating any profits, income or gains that –
- (a) arise in the EEA accounting period or any previous period to the surrendering company or any other person, and
  - (b) are chargeable to that tax for the EEA accounting period or any previous period.

Origin: ICTA Sch.18A para.6(2).

- (3) This subsection applies to the EEA amount so far as, for the purposes of any relevant non-UK tax, the EEA amount cannot be relieved in the EEA accounting period or any previous period –
- (a) by the payment of a credit,
  - (b) by the elimination or reduction of a tax liability, or
  - (c) in any other way.

Origin: ICTA Sch.18A para.6(3).

- (4) This section applies to the EEA amount (or a part of it) only if every step is taken (whether by the surrendering company or any other person) to secure that the EEA amount (or part) is –
- (a) taken into account as mentioned in subsection (2), or
  - (b) relieved as mentioned in subsection (3).

Origin: ICTA Sch.18A para.6(4).

## 23 The qualifying loss condition: relief for future periods [j4848rm]

- (1) This section applies to the EEA amount so far as subsections (2) and (3) apply to it.

Origin: ICTA Sch.18A para.7(1).

- (2) This subsection applies to the EEA amount so far as, for the purposes of any relevant non-UK tax, the EEA amount cannot be taken into account in calculating any profits, income or gains that –
- (a) might arise in any period after the EEA accounting period to the surrendering company or any other person, and
  - (b) (if there were any) would be chargeable to that tax for any period after the EEA accounting period.

Origin: ICTA Sch.18A para.7(2).

- (3) This subsection applies to the EEA amount so far as, for the purposes of any relevant non-UK tax, the EEA amount cannot be relieved in any period after the EEA accounting period –
- (a) by the payment of a credit,
  - (b) by the elimination or reduction of a tax liability, or
  - (c) in any other way.

Origin: ICTA Sch.18A para.7(3).

- (4) The determination as to the extent to which the EEA amount –
- (a) cannot be taken into account as mentioned in subsection (2), or
  - (b) cannot be relieved as mentioned in subsection (3),
- is made as at the time immediately after the EEA accounting period.

Origin: ICTA Sch.18A para.7(4).

## 24 The qualifying loss condition: other relief [j4849rm]

- (1) This section applies to the EEA amount so far as it is not excluded by subsection (2) or (3).

Origin: ICTA Sch.18A para.8(1).

- (2) The EEA amount is excluded so far as, for the purposes of any non-UK tax chargeable under the law of any territory (see section 87), it has been taken into account in calculating any profits, income or gains that –
- (a) have arisen in any period to the surrendering company or any other person, and
  - (b) were chargeable to that tax for the period (or would have been so chargeable had the EEA amount not been so taken into account).

Origin: ICTA Sch.18A para.8(2).

- (3) The EEA amount is excluded so far as, for the purposes of any non-UK tax chargeable under the law of any territory, it has been relieved in any period –
- (a) by the payment of a credit,
  - (b) by the elimination or reduction of a tax liability, or
  - (c) in any other way.

Origin: ICTA Sch.18A para.8(3).

- (4) “Territory” does not include the relevant EEA territory.

Origin: ICTA Sch.18A para.8(2), (3).

## 25 The precedence condition [j4850rm]

- (1) The EEA amount meets the precedence condition so far as no relief can be given for it in any territory outside the United Kingdom within subsection (2). “Territory” does not include the relevant EEA territory.

Origin: ICTA Sch.18A para.9(2).

- (2) A territory is within this subsection if –
- (a) a company resident in the territory owns (directly or indirectly) ordinary share capital in the surrendering company,
  - (b) a UK resident company owns (directly or indirectly) ordinary share capital in the company resident in the territory,
  - (c) the surrendering company is a 75% subsidiary of the UK resident company, and
  - (d) the surrendering company is not such a subsidiary as a result of its being a 75% subsidiary of another UK resident company.

Chapter 5 explains how to determine if a company is a 75% subsidiary of another company.

Origin: ICTA Sch.18A para.9(3).

- (3) In subsection (1) the reference to relief being given in any territory is a reference to relief being given –
- (a) by taking the EEA amount (or a part of it) into account in calculating any profits, income or gains of any person chargeable to non-UK tax under the law of the territory (see section 87),
  - (b) by the payment of a credit to any person under that law,
  - (c) by the elimination or reduction of a tax liability of any person under that law, or
  - (d) in any other way.

Origin: ICTA Sch.18A para.9(4).

*Other rules, assumptions and exclusions***26 Rules for recalculating EEA amount [j4851rm]**

- (1) For the purposes of Step 3 in section 16 the EEA amount is to be recalculated in accordance with any provision made by or under the Corporation Tax Acts –
  - (a) that applies for the purpose of calculating for corporation tax purposes losses or other amounts to which the EEA amount corresponds, or
  - (b) that otherwise affects in any way the amount of those losses or other amounts that is eligible for corporation tax relief.

Origin: ICTA Sch.18A para.16(1).

- (2) For the purposes of subsection (1) the Treasury may by regulations provide for the modification of any provision made by or under the Corporation Tax Acts –
  - (a) that applies as mentioned in subsection (1)(a), or
  - (b) that otherwise affects an amount as mentioned in subsection (1)(b).

Origin: ICTA Sch.18A para.16(2).

- (3) Regulations under subsection (2) may make provision in relation to –
  - (a) all classes of trade or business, or
  - (b) any particular class or classes of trade or business.

Origin: ICTA Sch.18A para.16(3).

- (4) Regulations under subsection (2) may –
  - (a) make different provision for different cases or different purposes,
  - (b) contain incidental, supplemental, consequential or transitional provision and savings, and
  - (c) make provision having retrospective effect.

Origin: ICTA Sch.18A, para.16(4), (5).

**27 Assumptions to be made in recalculating EEA amount [j4852rm]**

Sections 28 to 31 apply for the purpose of recalculating the EEA amount at Step 3 in section 16.

Origin: Drafting.

**28 Assumptions as to UK residence [j4853rm]**

- (1) Assume that the surrendering company is UK resident throughout the EEA accounting period.

Origin: ICTA Sch.18A para.12(1).

- (2) But this does not require it to be assumed –
  - (a) that there is any change in the place or places at which the surrendering company carries on its activities (although see section 29), or
  - (b) that the surrendering company ceases to be UK resident at the end of the EEA accounting period.

Origin: ICTA Sch.18A para.12(2).

- (3) Assume that the surrendering company becomes UK resident (and, therefore, within the charge to corporation tax) at the beginning of the EEA accounting period.

Origin: ICTA Sch.18A para.12(3).

## 29 Assumptions as to places in which activities carried on [j4854rm]

- (1) If during the EEA accounting period the surrendering company carries on a trade wholly or partly in the relevant EEA territory, assume that the trade is carried on wholly or partly in the United Kingdom.

Origin: ICTA Sch.18A para.13(1).

- (2) If the surrendering company holds any estate, interest or rights in or over land in the relevant EEA territory, assume that the land is in the United Kingdom.

Origin: ICTA Sch.18A para.13(2).

- (3) For the purposes of subsection (2) the reference to domestic concepts of law in relation to the land in the relevant EEA territory is to be read so as to produce the result that most closely corresponds with that produced by applying those concepts in relation to a UK property business or land in the United Kingdom.

Origin: ICTA Sch.18A para.13(3).

## 30 Assumed accounting periods [j4855rm]

- (1) Assume that an accounting period of the surrendering company begins at the beginning of the EEA accounting period.

Origin: ICTA Sch.18A para.14(1).

- (2) Assume that the accounting period ends –  
(a) when the EEA accounting period ends, or  
(b) if earlier, at the end of 12 months.

Origin: ICTA Sch.18A para.14(2).

- (3) If the accounting period ends in accordance with subsection (2)(b), assume that a further accounting period then begins and so on until the EEA accounting period ends.

Origin: ICTA Sch.18A para.14(3), (4); drafting.

- (4) Assume that any further accounting period ends –  
(a) at the end of 12 months, or  
(b) if earlier, when the EEA accounting period ends.

Origin: ICTA Sch.18A para.14(4); drafting.

## 31 Assumptions in relation to capital allowances [j4856rm]

- (1) This section applies if, before the EEA accounting period, the surrendering company incurs capital expenditure on the provision of plant or machinery for the purposes of any activity.

Origin: ICTA Sch.18A para.15(1).

- (2) For the purposes of Part 2 of CAA 2001 assume that the plant or machinery –
- (a) was provided for purposes wholly other than those of the activity, and
  - (b) was not brought into use for the purposes of the activity until the beginning of the EEA accounting period,
- and section 13 of CAA 2001 is to apply accordingly.

Origin: ICTA Sch.18A para.15(2).

- (3) This section is to be read as if contained in Part 2 of CAA 2001.

Origin: ICTA Sch.18A para.15(3).

### 32 Amounts excluded from group relief because of certain arrangements [j4842Brm]

- (1) An amount (or part of an amount) resulting from Step 4 in section 16 is excluded if –
- (a) it is not attributable for corporation tax purposes to any permanent establishment through which the surrendering company carries on a trade in the United Kingdom, and
  - (b) the following condition is met.

Origin: ICTA s.403G(1), (2), (6).

- (2) The condition is that the amount (or part) –
- (a) would not have resulted from Step 4 but for any arrangements within subsection (3), or
  - (b) would not have arisen to the surrendering company but for any such arrangements.

Origin: ICTA s.403G(3).

- (3) Arrangements are within this subsection if their main purpose, or one of their main purposes, is to secure that the amount (or part) may be surrendered for the purposes of group relief.

Origin: ICTA s.403G(4).

- (4) “Arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

Origin: ICTA s.403G(6).

## CHAPTER 4

### CLAIMS FOR GROUP RELIEF

#### *Overview*

### 33 Overview of Chapter [j4804rm]

- (1) This Chapter sets out how a company may claim group relief, how group relief is given and limitations on the amount of group relief to be given on a claim.

Origin: Drafting.

- (2) Sections 34 to 38 deal with claims in relation to surrenderable amounts under Chapter 2.

*Origin: Drafting.*

- (3) Sections 39 and 40 deal with claims in relation to surrenderable amounts under Chapter 3.

*Origin: Drafting.*

- (4) Section 41 deals with how group relief is given.

*Origin: Drafting.*

- (5) Sections 42 to 46 set out a limitation on the amount of group relief to be given on any claim.

*Origin: Drafting.*

- (6) Sections 47 to 53 set out limitations on the amount of group relief to be given on claims based on consortium condition 1, consortium condition 2 or consortium condition 3 (see Requirement 3 in section 34).

*Origin: Drafting.*

- (7) This Chapter needs to be read with Chapter 5 which explains how to determine if a company –

- (a) is a 75% subsidiary of another company,
- (b) is a member of a group of companies,
- (c) is owned by a consortium, or
- (d) is a member of a consortium.

*Origin: Drafting.*

#### *Surrenderable amounts under Chapter 2*

### **34 Group relief claims in relation to surrenderable amounts under Chapter 2** **[j4801Arm]**

- (1) This section applies in relation to the surrendering company's surrenderable amounts for the surrender period under Chapter 2.

*Origin: Drafting.*

- (2) A company (“the claimant company”) may make a claim for group relief for an accounting period (“the claim period”) in relation to those amounts (in whole or in part) if the following requirements are met.

#### *Requirement 1*

The surrendering company consents to the claim.

#### *Requirement 2*

There is a period (“the overlapping period”) that is common to the claim period and the surrender period.

#### *Requirement 3*

At a time during the overlapping period –

- (a) the group condition is met (see section 35),
- (b) consortium condition 1 is met (see section 36),
- (c) consortium condition 2 is met (see section 37(1)), or
- (d) consortium condition 3 is met (see section 37(2)).

Origin: ICTA s.402(1), (3A), (3B); FA 1998 Sch.18 para.70(1); drafting.

- (3) More than one company may make a claim for group relief in relation to any surrenderable amounts.

Origin: ICTA s.402(5).

### 35 The group condition [j4802rm]

The group condition is met if the surrendering company and the claimant company –

- (a) are members of the same group of companies (see section 56), and
- (b) are both UK related (see section 38).

Origin: ICTA s.402(2).

### 36 Consortium condition 1 [j4802Arm]

- (1) Consortium condition 1 is met if –
  - (a) the surrendering company is owned by a consortium of which the claimant company is a member, or
  - (b) the claimant company is owned by a consortium of which the surrendering company is a member,and both companies are UK related (see section 38).

Origin: ICTA s.402(3), (3A), (3B).

- (2) But consortium condition 1 is not met if a profit on a sale within subsection (3) by the company that is the member of the consortium would be a trading receipt of the member.

Origin: ICTA s.402(4).

- (3) A sale is within this subsection if it is a sale of –
  - (a) the share capital the member owns in the company owned by the consortium, or
  - (b) if that company is owned by the consortium as a result of section 57(2) (consortiums involving holding companies), the share capital the member owns in the holding company in question.

Origin: ICTA s.402(4).

### 37 Consortium conditions 2 and 3 [j4802Crm]

- (1) Consortium condition 2 is met if –
  - (a) the surrendering company is owned by a consortium,
  - (b) the claimant company is not a member of the consortium,
  - (c) the claimant company is a member of the same group of companies as a third company (“the link company”),
  - (d) the link company is a member of the consortium, and

- (e) the surrendering company, the claimant company and the link company are all UK related (see section 38).

Origin: ICTA s.402(3A), (3B), s.406(1), (2); drafting.

- (2) Consortium condition 3 is met if –
  - (a) the claimant company is owned by a consortium,
  - (b) the surrendering company is not a member of the consortium,
  - (c) the surrendering company is a member of the same group of companies as a third company (“the link company”),
  - (d) the link company is a member of the consortium, and
  - (e) the surrendering company, the claimant company and the link company are all UK related.

Origin: ICTA s.402(3A), (3B), s.406(1), (5); drafting.

- (3) But neither consortium condition 2 nor consortium condition 3 is met if a profit on a sale within subsection (4) by the link company would be a trading receipt of that company.

Origin: ICTA s.402(4), s.406(2), (5); drafting.

- (4) A sale is within this subsection if it is a sale of –
  - (a) the share capital the link company owns in the company (“the consortium company”) owned by the consortium as mentioned in subsection (1)(a) or (2)(a), or
  - (b) if the consortium company is owned by the consortium as a result of section 57(2) (consortiums involving holding companies), the share capital the link company owns in the holding company in question.

Origin: ICTA s.402(4), s.406(2), (5); drafting.

### **38 Meaning of “UK related” company [j4802Erm]**

For the purposes of sections 35 to 37 a company is UK related if –

- (a) it is a UK resident company, or
- (b) it is a non-UK resident company carrying on a trade in the United Kingdom through a permanent establishment.

Origin: ICTA s.402(2).

### *Surrenderable amounts under Chapter 3*

### **39 Group relief claims for surrenderable amounts under Chapter 3 [j4842rm]**

- (1) This section applies in relation to the surrendering company’s surrenderable amounts for the surrender period under Chapter 3.

Origin: Drafting.

- (2) A company (“the claimant company”) may make a claim for group relief for an accounting period (“the claim period”) in relation to those amounts (in whole or in part) if the following requirements are met.

#### *Requirement 1*

The surrendering company consents to the claim.

*Requirement 2*

There is a period (“the overlapping period”) that is common to the claim period and the surrender period.

*Requirement 3*

The EEA group condition is met (see section 40) at a time during the overlapping period.

*Origin:* ICTA s.402(1), (2); FA 1998 Sch.18 para.70(1); drafting.

- (3) More than one company may make a claim for group relief in relation to any surrenderable amounts.

*Origin:* ICTA s.402(5).

**40 The EEA group condition [j4842Crm]**

- (1) The EEA group condition is met if subsections (2) and (3) apply.

*Origin:* Drafting.

- (2) This subsection applies if the surrendering company is an EEA related company (as defined in section 15).

*Origin:* ICTA s.402(2A), (2B).

- (3) This subsection applies if –
- (a) the surrendering company is a 75% subsidiary of the claimant company and the claimant company is UK resident, or
  - (b) both the surrendering company and the claimant company are 75% subsidiaries of a third company that is UK resident.

*Origin:* ICTA s.402(2A).

*Giving of group relief***41 Deduction in calculating claimant company’s net profits [j4842Arm]**

- (1) If the claimant company makes a claim as mentioned in section 34 or 39, the group relief is given by the making of a deduction in calculating the claimant company’s net profits of the claim period (see Step 2 of the calculation in section {j9009}).

*Origin:* ICTA s.403(1); drafting.

- (2) The amount of the deduction is –
- (a) an amount equal to the surrendering company’s surrenderable amounts for the surrender period, or
  - (b) if the claim is in relation to only part of those amounts, an amount equal to that part.

*Origin:* ICTA s.403(1); drafting.

- (3) Subsection (2) is subject to –
- (a) subsections (4) to (7),
  - (b) the limitation set out in sections 42 to 46 that applies in relation to all claims for group relief,

- (c) the limitations set out in sections 47 to 53 that apply in relation to claims based on consortium condition 1, consortium condition 2 or consortium condition 3,
- (d) Chapter 3 of Part [ ] (that limits the group relief that can be given for trading losses made in limited partnerships or limited liability partnerships), and
- (e) [section 492(8) of ICTA].

Origin: ICTA s.403(4); drafting.

- (4) The deduction is to be made –
  - (a) before deductions for relief within subsection (5), but
  - (b) after all other deductions to be made at Step 2 of the calculation in section {j9009} (apart from deductions for group relief on other claims).

Origin: ICTA s.407(1).

- (5) The deductions within this subsection are deductions for relief –
  - (a) under [section {j4505rm}] in relation to a loss made in an accounting period after the claim period,
  - (b) under section 260(3) of CAA 2001 in relation to capital allowances for an accounting period after the claim period, and
  - (c) under section 83 of, or paragraph 4 of Schedule 11 to, FA 1996 in relation to a deficit for a deficit period after the claim period.

Origin: ICTA s.407(2).

- (6) For the purposes of subsection (4)(b) assume that the claimant company has claimed all relief available to it for the claim period under [section {j4505rm} of this Act] or section 260(3) of CAA 2001.

Origin: ICTA s.407(1).

- (7) Corporation tax relief is not to be given more than once for the same amount, whether –
  - (a) by giving group relief and by giving some other relief (for any accounting period) to the surrendering company, or
  - (b) by giving group relief more than once.

Origin: ICTA s.411(1).

*General limitation on amount of group relief to be given*

**42 Limitation on amount of group relief applying to all claims [j4803rm]**

The amount of group relief to be given on a claim (“the current claim”) is limited to –

- (a) the usable part of the surrenderable amounts (see section 43), or
- (b) if less, the usable part of the claimant company’s total profits of the claim period (see section 44).

Origin: ICTA s.403A(1).

**43 Usable part of the surrenderable amounts [j4803Arm]**

- (1) The usable part of the surrenderable amounts is the amount equal to –

- (a) the relevant proportion of the surrendering company's surrenderable amounts for the surrender period (see subsection (2)), less
- (b) the relevant amount (see subsection (3)).

**Origin:** ICTA s.403A(2).

- (2) The relevant proportion is the same as the proportion of the surrender period included in the overlapping period (see section 46).

**Origin:** ICTA s.403A(3), s.403B(1).

- (3) The relevant amount is the amount calculated by –
- (a) taking the steps set out in subsection (5) in relation to each relevant prior claim, and
  - (b) adding together all the amounts to be added under this subsection in relation to relevant prior claims as a result of Step 3 in subsection (5).

**Origin:** s.403A(4).

- (4) A claim is a relevant prior claim for the purposes of this section if –
- (a) it is a claim by any company for group relief in relation to the surrendering company's surrenderable amounts for the surrender period (in whole or in part),
  - (b) it is made before the current claim, and
  - (c) it has not been withdrawn.

**Origin:** ICTA s.403A(4).

- (5) Take the following steps in relation to each relevant prior claim.

*Step 1*

Identify the overlapping period for the relevant prior claim (“the prior overlapping period”).

*Step 2*

Identify any period that is common to the overlapping period for the current claim and the prior overlapping period.

If there is a common period, go to Step 3.

If there is no common period, no amount is to be added under subsection (3) in relation to the relevant prior claim (and ignore Step 3).

*Step 3*

Determine the amount to be added under subsection (3) in relation to the relevant prior claim.

That amount is equal to a proportion of the amount of group relief given on the relevant prior claim.

That proportion is the same as the proportion of the prior overlapping period included in the common period identified at Step 2.

**Origin:** ICTA s.403A(4), s.403B(1).

**44 Usable part of claimant company's total profits of the claim period [j4803Brm]**

- (1) The usable part of the claimant company's total profits of the claim period is the amount equal to –
- (a) the relevant proportion of those total profits (see subsection (2)), less

(b) the relevant amount (see subsection (3)).

Origin: ICTA s.403A(2).

(2) The relevant proportion is the same as the proportion of the claim period included in the overlapping period (see section 46).

Origin: ICTA s.403A(3), s.403B(1).

(3) The relevant amount is the amount calculated by –  
(a) taking the steps set out in subsection (5) in relation to each relevant prior claim, and  
(b) adding together all the amounts to be added under this subsection in relation to relevant prior claims as a result of Step 3 in subsection (5).

Origin: s.403A(5).

(4) A claim is a relevant prior claim for the purposes of this section if –  
(a) it is a claim by the claimant company for group relief which would be given by way of a deduction in calculating the company's net profits of the claim period,  
(b) it is made before the current claim, and  
(c) it has not been withdrawn.

Origin: ICTA s.403A(5).

(5) Take the following steps in relation to each relevant prior claim.

*Step 1*

Identify the overlapping period for the relevant prior claim ("the prior overlapping period").

*Step 2*

Identify any period that is common to the overlapping period for the current claim and the prior overlapping period.

If there is a common period, go to Step 3.

If there is no common period, no amount is to be added under subsection (3) in relation to the relevant prior claim (and ignore Step 3).

*Step 3*

Determine the amount to be added under subsection (3) in relation to the relevant prior claim.

That amount is equal to a proportion of the amount of group relief given on the relevant prior claim.

That proportion is the same as the proportion of the prior overlapping period included in the common period identified at Step 2.

Origin: ICTA s.403A(5), s.403B(1).

(6) For the purposes of this section, references to the claimant company's total profits are references to –  
(a) those profits after the deductions mentioned in section 41(4)(b), and  
(b) if the claimant company is non-UK resident, those profits excluding so much of them –  
(i) as arise from activities that are double taxation exempt for the claim period (see section 86), and

- (ii) are not covered by the deductions mentioned in section 41(4)(b).

Origin: ICTA s.403D(2); drafting.

#### 45 Supplementary provision for the purposes of sections 43 and 44 [j4803Crm]

- (1) If two or more claims for group relief are made at the same time, for the purposes of sections 43 and 44 treat the claims as made –
- (a) in such order as the company making them may elect or the companies making them may jointly elect, or
  - (b) if no such election is made, in such order as an officer of Revenue and Customs may direct.

Origin: ICTA s.403A(7).

- (2) For the purposes of Step 3 in subsection (5) of each of sections 43 and 44 the amount of group relief given on a relevant prior claim is determined on the basis that relief is given on the claim before it is given on any later claim.

Origin: Annex 1, Change [jc612].

- (3) Subsection (4) applies in a case in which the use of the proportion mentioned –
- (a) in subsection (2) of section 43 or at Step 3 in subsection (5) of that section, or
  - (b) in subsection (2) of section 44 or at Step 3 in subsection (5) of that section,

would, in the circumstances of the case, produce a result that is unjust or unreasonable in relation to any person.

Origin: ICTA s.403B(2).

- (4) The proportion is to be modified so far as necessary to produce a result that is just and reasonable.

Origin: ICTA s.403B(2).

#### 46 Meaning of “the overlapping period” [j4803AArm]

- (1) In sections 43 and 44 “the overlapping period”, in relation to a claim for group relief, has the meaning given at Requirement 2 in section 34 or 39 (as the case may be).

Origin: ICTA s.403A(8).

- (2) But if during any part of the overlapping period the relevant condition is not met, that part is treated –
- (a) as not forming part of the overlapping period, and
  - (b) as forming –
    - (i) a part of the surrender period that is not included in the overlapping period, and
    - (ii) a part of the claim period that is not included in the overlapping period.

Origin: ICTA s.403A(9).

- (3) The relevant condition is the condition on which the claim for group relief is based, that is –

the group condition,  
consortium condition 1,  
consortium condition 2,  
consortium condition 3, or  
the EEA group condition.

Origin: ICTA s.403A(10).

*Limitations on group relief if claim based on consortium condition 1, 2 or 3*

**47 Consortium condition 1: limitation if surrendering company owned by consortium [j4807rm]**

- (1) This section applies if –
- (a) the claimant company makes a claim for group relief based on consortium condition 1, and
  - (b) it is the surrendering company that is owned by the consortium.

Origin: ICTA s.403C(1), (2).

- (2) The group relief to be given on the claim is limited to the applicable proportion of the usable part of the surrenderable amounts.

In determining the usable part of the surrenderable amounts for the purposes of this subsection ignore section 43(1)(b).

Origin: ICTA s.403C(2).

- (3) The applicable proportion is the same as the lowest of the following proportions –
- (a) the proportion of the ordinary share capital of the surrendering company that is beneficially owned by the claimant company,
  - (b) the proportion to which the claimant company is beneficially entitled of any profits available for distribution to equity holders of the surrendering company, and
  - (c) the proportion to which the claimant company would be beneficially entitled of any assets of the surrendering company available for distribution to such equity holders on a winding up.

Paragraphs (b) and (c) need to be read with Chapter 6.

Origin: ICTA s.403C(2); drafting.

- (4) For the purposes of subsection (3) –
- (a) the proportions mentioned in paragraphs (a) to (c) are those prevailing during the overlapping period, and
  - (b) if any of those proportions changes during that period, use the average of that proportion during that period.

“The overlapping period” is to be read in accordance with section 46.

Origin: ICTA s.403C(2).

- (5) If the surrendering company is owned by the consortium as a result of section 57(2) (consortiums involving holding companies), references in subsection (3) to the surrendering company are to be read as references to the holding company in question.

Origin: ICTA s.403C(4).

**48 Consortium condition 1: limitation if claimant company owned by consortium [j4807AArm]**

- (1) This section applies if—
- (a) the claimant company makes a claim for group relief based on consortium condition 1, and
  - (b) it is the claimant company that is owned by the consortium.

Origin: ICTA s.403C(1), (2).

- (2) The group relief to be given on the claim is limited to the applicable proportion of the usable part of the claimant company's total profits of the claim period. In determining the usable part of those total profits for the purposes of this subsection ignore section 44(1)(b).

Origin: ICTA s.403C(3).

- (3) The applicable proportion is the same as the lowest of the following proportions—
- (a) the proportion of the ordinary share capital of the claimant company that is beneficially owned by the surrendering company,
  - (b) the proportion to which the surrendering company is beneficially entitled of any profits available for distribution to equity holders of the claimant company, and
  - (c) the proportion to which the surrendering company would be beneficially entitled of any assets of the claimant company available for distribution to such equity holders on a winding up.

Paragraphs (b) and (c) need to be read with Chapter 6.

Origin: ICTA s.403C(3); drafting.

- (4) For the purposes of subsection (3)—
- (a) the proportions mentioned in paragraphs (a) to (c) are those prevailing during the overlapping period, and
  - (b) if any of those proportions changes during that period, use the average of that proportion during that period.

“The overlapping period” is to be read in accordance with section 46.

Origin: ICTA s.403C(3).

- (5) If the claimant company is owned by the consortium as a result of section 57(2) (consortiums involving holding companies), references in subsection (3) to the claimant company are to be read as references to the holding company in question.

Origin: ICTA s.403C(4).

**49 Consortium conditions 2 and 3: limitations in sections 47 and 48 to apply [j4807AArm]**

- (1) This section applies if the claimant company makes a claim for group relief based on consortium condition 2 or consortium condition 3.

Origin: Drafting.

- (2) If the claim is based on consortium condition 2, the limitation on group relief in section 47(2) applies in relation to the claim.  
But for that purpose in section 47(3) references to the claimant company are to be read as references to the link company.

Origin: ICTA s.406(2).

- (3) If the claim is based on consortium condition 3, the limitation on group relief in section 48(2) applies in relation to the claim.  
But for that purpose in section 48(3) references to the surrendering company are to be read as references to the link company.

Origin: ICTA s.406(6).

**50 Consortium conditions 2 and 3: overall limitation on relief for claims made by companies in link company's group [j4807ACrm]**

- (1) If the claimant company makes a claim for group relief based on consortium condition 2, the amount of group relief to be given on the claim is limited by subsections (2) and (3).

Origin: Drafting.

- (2) There is a limit on the amount of group relief that can be given, in total, on consortium claims made by the link company and group companies in relation to the surrendering company's surrenderable amounts for the surrender period.

Origin: ICTA s.406(4).

- (3) That limit is the maximum amount of group relief that could be given to the link company in relation to those amounts on consortium claims –
- (a) assuming that no consortium claims in relation to those amounts were made by group companies based on consortium condition 2, and
  - (b) ignoring any lack of income and chargeable gains of the link company from which deductions could be made as mentioned in section 41(1).

Origin: ICTA s.406(4).

- (4) If the claimant company makes a claim for group relief based on consortium condition 3, the amount of group relief to be given on the claim is limited by subsections (5) to (7).

Origin: Drafting.

- (5) There is a limit on the amount of group relief that can be given, in total, to the claimant company for the claim period on consortium claims made in relation to losses and other amounts surrendered by the link company and group companies.

Origin: ICTA s.406(8).

- (6) That limit is the same as the limit that, as a result of section 48(2), would apply for the purposes of a consortium claim made by the claimant company for the claim period in relation to losses or other amounts surrendered by the link company.

Origin: ICTA s.406(8).

- (7) In applying section 48(4) for the purposes of subsection (6) assume that the overlapping period is the same as the claim period.

Origin: ICTA s.406(8).

- (8) In this section –
- “consortium claim” means a claim for group relief based on consortium condition 1, consortium condition 2 or consortium condition 3, and
- “group company”, for the purpose of determining in accordance with this section a limitation on the amount of group relief to be given on a claim based on consortium condition 2 or consortium condition 3, means a company that is a member of the same group of companies as the link company (other than the link company itself).

Origin: ICTA s.406(4), (8).

**51 Consortium conditions 1 and 2: limitation on relief if surrenderable amounts include trading loss [j4807Brm]**

- (1) This section applies if –
- the claimant company makes a claim for group relief based on consortium condition 1,
  - it is the surrendering company that is owned by the consortium, and
  - the surrendering company’s surrenderable amounts for the surrender period include loss within section 3(1)(a).

Origin: ICTA s.403ZA(3).

- (2) This section also applies if –
- the claimant company makes a claim for group relief based on consortium condition 2, and
  - the surrendering company’s surrenderable amounts for the surrender period include loss within section 3(1)(a).

Origin: ICTA s.403ZA(3), s.406(2).

- (3) The amount of group relief to be given on the claim is to be determined on the assumption that –
- the surrendering company makes a claim under [section {j4505rm}] in relation to the loss mentioned in subsection (1)(c) or (2)(b), and
  - relief under that section is to be given in relation to the loss before the group relief is given.

Origin: ICTA s.403ZA(3).

- (4) If section 52 also applies in relation to the claim for group relief, give effect to subsection (3) of this section by reducing the surrenderable amounts for the purposes of subsections (3) and (4) of that section by the amount of relief to be given on the surrendering company’s claim as mentioned in subsection (3)(b) of this section.

Origin: ICTA s.403ZA(4).

**52 Consortium conditions 1 and 2: limitation on relief if surrendering company is in a group of companies [j4814rm]**

- (1) This section applies if –

- (a) the claimant company makes a claim for group relief based on consortium condition 1,
- (b) it is the surrendering company that is owned by the consortium, and
- (c) the surrendering company is also a member of a group of companies.

Origin: ICTA s.405(1).

- (2) This section also applies if –
  - (a) the claimant company makes a claim for group relief based on consortium condition 2, and
  - (b) the surrendering company is a member of a group of companies.

Origin: ICTA s.405(1), s.406(2).

- (3) No group relief is to be given on the claim unless the surrendering company’s surrenderable amounts for the surrender period exceed the group’s potential relief (see subsection (5)).

Origin: ICTA s.405(1).

- (4) If the surrenderable amounts exceed the group’s potential relief, the group relief to be given on the claim is limited to the amount of the excess.

Origin: ICTA s.405(1).

- (5) Take the following steps to determine the group’s potential relief.

*Step 1*

In relation to each company that is a member of the same group of companies as the surrendering company, identify each of its accounting periods that includes a period common to the surrender period (a “relevant accounting period”).

*Step 2*

Take the total profits of each relevant accounting period for the company in question.

For this purpose, a company’s total profits are its profits after making the deductions in section 41(4)(b).

*Step 3*

Determine the appropriate proportion of the total profits for each relevant accounting period and make any deductions to be made for relief on claims within subsection (6).

The appropriate proportion of the total profits for a relevant accounting period is the same as the proportion of that period that is included in the surrender period.

*Step 4*

To give the group’s potential relief, add together all the results from Step 3.

Origin: ICTA s.405(2), (3), s.413(2A); Annex 1, Change [jc645]; drafting.

- (6) A claim is within this subsection if it –
  - (a) is a claim for group relief based on the group condition, and

- (b) is in relation to losses or other amounts surrendered by a member of the same group of companies as the surrendering company (other than the surrendering company itself).

Origin: ICTA s.405(3).

**53 Consortium conditions 1 and 3: limitation on relief if claimant company is in a group of companies [j4815rm]**

- (1) This section applies if –
- (a) the claimant company makes a claim for group relief based on consortium condition 1,
  - (b) it is the claimant company that is owned by the consortium, and
  - (c) the claimant company is also a member of a group of companies.

Origin: ICTA s.405(4).

- (2) This section also applies if –
- (a) the claimant company makes a claim for group relief based on consortium condition 3, and
  - (b) the claimant company is a member of a group of companies.

Origin: ICTA s.405(4), s.406(2).

- (3) The amount of group relief to be given on the claim (“the current claim”) is limited to the amount determined as follows.

Origin: ICTA s.405(4).

- (4) Take the claimant company’s total profits of the claim period and deduct the maximum amount of group relief that could be given to the claimant company for the claim period on claims based on the group condition.

Origin: ICTA s.405(5).

- (5) For the purpose of determining that maximum amount, take account of any claim made before the current claim that –
- (a) is a claim for group relief based on the group condition,
  - (b) is made by a member of the same group of companies as the claimant company (other than the claimant company itself), and
  - (c) is in relation to losses or other amounts surrendered by a company that is also a member of that group (other than the claimant company itself).

Origin: ICTA s.405(6).

## CHAPTER 5

### SUBSIDIARIES, GROUPS AND CONSORTIUMS

#### *Overview etc*

**54 Overview of Chapter etc [j4800Grm]**

- (1) This Chapter explains how to determine if a company –
- (a) is a 75% or 90% subsidiary of another company (see section 55),

- (b) is a member of a group of companies (see section 56),
- (c) is owned by a consortium (see section 57), or
- (d) is a member of a consortium (see section 57).

**Origin:** Drafting.

- (2) Sections 58 to 60 qualify those explanations in cases involving transfers of companies.

**Origin:** Drafting.

- (3) In this Chapter “trading company” means a company the business of which consists wholly or mainly in the carrying on of a trade or trades.

**Origin:** ICTA s.413(3).

#### *Explanations of terms*

### **55 Meaning of “75% subsidiary” and “90% subsidiary” [j4800Brm]**

- (1) In this Part “75% subsidiary” and “90% subsidiary” are to be read in accordance with [section 838 of ICTA].

This is subject to what follows.

**Origin:** ICTA s.413(4); drafting.

- (2) In applying the definition of “75% subsidiary” in [section 838 of ICTA], treat share capital of a registered industrial or provident society as if it were ordinary share capital.

**Origin:** ICTA s.413(4).

- (3) Subsection (4) applies if –
  - (a) a company (“the shareholder”) directly owns shares in another company, and
  - (b) a profit on the sale of those shares would be a trading receipt of the shareholder.

**Origin:** ICTA s.413(5).

- (4) The shareholder is treated as not being the owner of those shares for the purpose of determining if any company is a 75% subsidiary of any other company.

**Origin:** ICTA s.413(5).

- (5) Subsection (6) applies if (apart from that subsection) a company (“the subsidiary”) would be a 75% or 90% subsidiary of another company (“the parent”) at a time (“the relevant time”).

**Origin:** ICTA s.413(7).

- (6) The subsidiary is not a 75% or 90% subsidiary of the parent at the relevant time unless at that time the parent –
  - (a) is beneficially entitled to at least 75% or 90% (as the case may be) of any profits available for distribution to equity holders of the subsidiary, and

- (b) would be beneficially entitled to at least 75% or 90% (as the case may be) of any assets of the subsidiary available for distribution to such equity holders on a winding up.

Paragraphs (a) and (b) need to be read with Chapter 6.

Origin: ICTA s.413(7), (10).

## 56 Groups of companies [j4800Crm]

For the purposes of this Part two companies are members of the same group of companies if—

- (a) one is the 75% subsidiary of the other, or  
 (b) both are 75% subsidiaries of a third company.

Origin: ICTA s.413(3).

## 57 Companies owned by consortiums and members of consortiums [j4800Drm]

- (1) For the purposes of this Part a company is owned by a consortium if—
- (a) the company is a trading or holding company,  
 (b) the company is not a 75% subsidiary of any company, and  
 (c) at least 75% of the company's ordinary share capital is beneficially owned by other companies each of which beneficially owns at least 5% of that capital.

The other companies each owning at least 5% of the share capital are the members of the consortium for the purposes of this Part.

Origin: ICTA s.402(3), s.413(6), (7); drafting.

- (2) If—
- (a) a trading company is a 90% subsidiary of a holding company and is not a 75% subsidiary of any company apart from the holding company, and  
 (b) as a result of subsection (1), the holding company is owned by a consortium,

then for the purposes of this Part the trading company is also owned by the consortium.

Origin: ICTA s.402(3); drafting.

- (3) “Holding company” means a company the business of which consists wholly or mainly in the holding of shares or securities of companies that—
- (a) are its 90% subsidiaries, and  
 (b) are trading companies.

Origin: ICTA s.413(3).

### *Arrangements for transfers of companies*

## 58 Arrangements for transfer of member of group of companies etc [j4816rm]

- (1) This section applies if (apart from this section) one company (“the first company”) and another company (“the second company”) would be members of the same group of companies.

Origin: ICTA s.410(1).

- (2) The companies are not members of the same group of companies if –
- (a) one of the companies has surrenderable amounts for an accounting period (“the current period”), and
  - (b) arrangements within subsection (3) are in place.

Origin: ICTA s.410(1).

- (3) Arrangements are within this subsection if their effect is any of the following.

*Effect 1*

At some time during or after the current period, the first company or any successor of it –

- (a) could cease to be a member of the same group of companies as the second company, and
- (b) could become a member of the same group of companies as a relevant third company.

*Effect 2*

At some time during or after the current period, a relevant person has or could obtain, or relevant persons together have or could obtain, control of the first company but not of the second company.

“Relevant person” means any person other than the first or second company.

*Effect 3*

At some time during or after the current period, a relevant third company could, as a relevant successor, start to carry on the whole or a part of a trade that at a time during the current period is carried on by the first company.

For this purpose a relevant third company could carry on the whole or a part of a trade as a relevant successor if it could carry on the whole or the part of the trade –

- (a) as the successor of the first company, or
- (b) as the successor of another company which is not a relevant third company and which started to carry on the whole or a part of the trade during or after the current period.

Origin: ICTA s.410(1); drafting.

- (4) “Relevant third company” means a company that (apart from any arrangements within subsection (3)) is not a member of the same group of companies as the first company.

Origin: ICTA s.410(4).

**59 Arrangements for transfer of company owned by consortium etc [j4817rm]**

- (1) This section applies if (apart from this section) a trading company would be owned by a consortium.

Origin: ICTA s.410(2).

- (2) The trading company is not owned by the consortium if –
- (a) for an accounting period (“the current period”) the trading company or a member of the consortium has surrenderable amounts, and
  - (b) arrangements within subsection (3) are in place.

Origin: ICTA s.410(2).

- (3) Arrangements are within this subsection if their effect is any of the following.

*Effect 1*

The trading company or a successor of it could, at some time during or after the current period, become a 75% subsidiary of a relevant third company.

*Effect 2*

Any person who owns, or any persons who together own, less than 50% of the ordinary share capital of the trading company –

- (a) has, or together have, control of the trading company, or
- (b) could obtain such control at some time during or after the current period.

*Effect 3*

Any person (“P”), either alone or together with persons connected with P –

- (a) holds or could obtain at least 75% of the relevant votes, or
- (b) controls or could control the exercise of at least 75% of those votes.

For this purpose –

“connected” is to be read in accordance with [section 839 of ICTA] but as if subsection (7) of that section were omitted, and

“relevant votes” means the votes which may be cast in a poll taken at a general meeting of the trading company held during or after the current period.

*Effect 4*

A relevant third company could, as a relevant successor, start to carry on the whole or a part of a trade that at a time during the current period is carried on by the trading company.

For this purpose a relevant third company could carry on the whole or a part of a trade as a relevant successor if it could carry on the whole or the part of the trade –

- (a) as the successor of the trading company, or
- (b) as the successor of another company which is not a relevant third company and which started to carry on the whole or a part of the trade during or after the current period.

Origin: ICTA s.410(2), (5).

- (4) “Relevant third company” means a company that (apart from any arrangements within subsection (3)) is not a member of the same group of companies as the trading company.

Origin: ICTA s.410(4).

- (5) If the trading company would (apart from this section) be owned by a consortium as a result of section 57(2) (consortiums involving holding companies) –
- (a) references in this section (apart from references under Effect 3) to the trading company are to be read as including references to the holding company in question, and
  - (b) Effect 3 does not apply if P is that holding company.

Origin: ICTA s.410(2), (3).

**60 Supplementary provision for the purposes of sections 58 and 59 [j4818rm]**

- (1) This section applies for the purposes of sections 58 and 59.

Origin: Drafting.

- (2) “Arrangements” –
- (a) includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable), but
  - (b) does not include a power of a Minister of the Crown or a Northern Ireland department to give directions to a statutory body as to the disposal of assets belonging to the body or to a subsidiary of the body.

Origin: ICTA s.403G(6), s.410(5), (7); drafting.

- (3) “Control” has the meaning given by [section 840 of ICTA] (except in paragraph (b) of Effect 3 in section 59).

Origin: ICTA s.410(5).

- (4) A company is the successor of another company if –
- (a) it carries on a trade which, in whole or in part, the other company used to carry on,
  - (b) [section 343 of ICTA] applies in relation to the companies as, respectively, the successor and the predecessor within the meaning of that section, and
  - (c) the two companies are connected with each other in accordance with [section 839 of ICTA].

Origin: ICTA s.410(6).

## CHAPTER 6

EQUITY HOLDERS AND PROFITS AND ASSETS AVAILABLE FOR DISTRIBUTION

*Overview etc*

**61 Overview of Chapter etc [j4819rm]**

- (1) This Chapter applies for the purposes of sections 47(3)(b) and (c), 48(3)(b) and (c) and 55(6)(a) and (b).

Origin: ICTA Sch.18 paras.1(1), 2(1), 6.

- (2) Section 62 defines “equity holder” and is supplemented by sections 63 to 67.

Origin: Drafting.

- (3) Sections 68 to 71 contain basic provisions about determining the proportion to which a company is beneficially entitled –
- (a) of any profits available for distribution to the equity holders of another company, and
  - (b) of any assets available for distribution to the equity holders of another company on a winding up.

Origin: Drafting.

- (4) Sections 72 to 85 supplement sections 68 to 71.

Origin: Drafting.

- (5) For the purposes of this Chapter –
- (a) “new consideration” has the meaning given by [section 254 of ICTA], and
  - (b) all loans are regarded as being securities.

Origin: ICTA Sch.18 paras.1(8), 3(5), 7(2).

### *Equity holders*

#### **62 Meaning of “equity holder” [j4820rm]**

- (1) An equity holder of a company (“the relevant company”) is any person who –
- (a) holds ordinary shares in the company (see section 64), or
  - (b) is a loan creditor of the company in relation to a loan other than a normal commercial loan (see section 65).

This is subject to section 63.

Origin: ICTA Sch.18 para.1(1).

- (2) [Subsection (7) of section 417 of ICTA] applies for the purposes of subsection (1)(b) of this section as it applies for the purposes of [Part 11 of that Act], but as if the reference to [subsection (9) of that section] were omitted.

Origin: ICTA Sch.18 para.1(4).

#### **63 Use of relevant company’s assets [j4820Arm]**

- (1) This section applies if –
- (a) a person (“P”) has, directly or indirectly, provided new consideration for any shares or securities in the relevant company,
  - (b) an allowance within subsection (2) has been made to the relevant company in relation to assets of the relevant company, and
  - (c) those assets –
    - (i) are used by P for the purposes of a trade carried on by P, or
    - (ii) are used by a person connected with P for the purposes of a trade carried on by that connected person.

“Connected” is to be read in accordance with [section 839 of ICTA].

Origin: ICTA Sch.18 para.1(6), (8).

- (2) The allowances within this subsection are –
- (a) a first-year allowance (within the meaning of Part 2 of CAA 2001) in relation to expenditure incurred by the relevant company on the provision of plant or machinery,
  - (b) a writing-down allowance (within the meaning of Part 2 of CAA 2001) in relation to expenditure so incurred, and
  - (c) an allowance under Chapter 3 of Part 6 of CAA 2001 in relation to expenditure incurred by the relevant company on research and development (within the meaning of that Part).

Origin: ICTA Sch.18 para.1(6).

- (3) Treat P (and no other person) as being an equity holder in relation to the shares or securities mentioned in subsection (1)(a).

Origin: ICTA Sch.18 para.1(6).

- (4) Subsection (5) applies if—
- (a) P is a bank,
  - (b) the only new consideration provided by P is provided in the normal course of banking business by way of a normal commercial loan (see section 65), and
  - (c) the cost to the relevant company of the assets mentioned in subsection (1)(b) is less than the amount of the new consideration.

Origin: ICTA Sch.18 para.1(7).

- (5) The reference in subsection (3) to the shares or securities is to be read as a reference to only so much of that normal commercial loan as is equal to that cost of those assets.

Origin: ICTA Sch.18 para.1(7).

#### **64 Meaning of “ordinary shares” [j4821rm]**

- (1) “Ordinary shares” means shares other than shares in relation to which conditions A to E are met.

Origin: ICTA Sch.18 para.1(2).

- (2) Condition A is that the shares are issued for consideration which includes new consideration.

Origin: ICTA Sch.18 para.1(3).

- (3) Condition B is that the shares do not carry any right to conversion into shares or securities other than a right to conversion into—
- (a) shares to which section 67(1) applies,
  - (b) securities to which section 67(2) applies, or
  - (c) shares or securities in the relevant company’s quoted parent company (see section 67(3) to (5)).

Origin: ICTA Sch.18 para.1(3).

- (4) Condition C is that the shares do not carry any right to the acquisition of shares or securities.

Origin: ICTA Sch.18 para.1(3).

- (5) Condition D is that the shares do not carry any right to dividends other than dividends which—
- (a) are of a fixed amount or are at a fixed percentage of the nominal value of the shares, and
  - (b) represent no more than a reasonable commercial return on the new consideration mentioned in subsection (2).

Origin: ICTA Sch.18 para.1(3).

- (6) Condition E is that the shares, on repayment, do not carry rights to an amount exceeding the new consideration mentioned in subsection (2) except so far as those rights are reasonably comparable with those generally carried by fixed dividend shares listed on a recognised stock exchange.

Origin: ICTA Sch.18 para.1(3).

## 65 Meaning of “normal commercial loan” [j4822rm]

- (1) “Normal commercial loan” means a loan –
- which includes new consideration, and
  - in relation to which conditions A to D are met.

Origin: ICTA Sch.18 para.1(5).

- (2) Condition A is that the loan does not carry any right to conversion into shares or securities other than a right to conversion into –
- shares to which section 67(1) applies,
  - securities to which section 67(2) applies, or
  - shares or securities in the relevant company’s quoted parent company (see section 67(3) to (5)).

Origin: ICTA Sch.18 para.1(5).

- (3) Condition B is that the loan does not carry any right to the acquisition of shares or securities.

Origin: ICTA Sch.18 para.1(5).

- (4) Condition C is that the loan does not entitle the loan creditor to any amount by way of interest which –
- depends to any extent on the results of the relevant company’s business or on the results of any part of that business,
  - depends to any extent on the value of any of the relevant company’s assets, or
  - exceeds a reasonable commercial return on the new consideration lent.
- This subsection needs to be read with section 66.

Origin: ICTA Sch.18 para.1(5).

- (5) Condition D is that the loan is a loan in relation to which the loan creditor is entitled, on repayment, to an amount which –
- does not exceed the new consideration lent, or
  - is reasonably comparable with the amount generally repayable (in relation to an equal amount of new consideration) under the terms of issue of securities listed on a recognised stock exchange.

Origin: ICTA Sch.18 para.1(5).

## 66 Normal commercial loans: interest depending on company’s results or value of assets [j4822Arm]

- (1) Interest is not within section 65(4)(a) just because the terms of the loan provide for the rate of interest –
- to be reduced if the results of the relevant company’s business or any part of the business improve, or

(b) to be increased if such results worsen.

Origin: ICTA Sch.18 para.1(5E).

- (2) Interest is not within section 65(4)(b) just because the terms of the loan provide for the rate of interest –
- (a) to be reduced if the value of any of the relevant company’s assets increases, or
  - (b) to be increased if the value of any such assets decreases.

Origin: ICTA Sch.18 para.1(5E).

- (3) Subsection (4) applies if –
- (a) a loan is made to the relevant company for the purpose of facilitating the acquisition of land,
  - (b) the loan is made on the basis mentioned in subsection (5), and
  - (c) none of the land that the loan is used to acquire is acquired with a view to resale at a profit.

Origin: ICTA Sch.18 para.1(5F).

- (4) Interest on the loan is not within section 65(4)(b) just because the terms of the loan are such that the only way the loan creditor can enforce payment of an amount due is by exercising rights granted by way of security over the land that the loan is used to acquire.

Origin: ICTA Sch.18 para.1(5H).

- (5) The basis referred to in subsection (3)(b) is that –
- (a) the whole of the loan is to be applied in the acquisition of land by the relevant company or in meeting incidental costs incurred wholly and exclusively for the purpose of obtaining the loan or providing security for the loan,
  - (b) the payment of any amount due in connection with the loan to the person making it is to be secured on the land that the loan is used to acquire, and
  - (c) no other security is to be required for the payment of any such amount.

Origin: ICTA Sch.18 para.1(5G), (5I).

- (6) “Incidental costs” means expenditure on fees, commissions, advertising, printing or other incidental matters.

Origin: ICTA Sch.18 para.1(5I).

**67 Supplementary provision for the purposes of sections 64 and 65 [j4823rm]**

- (1) This subsection applies to any shares –
- (a) in relation to which conditions A, C, D and E in section 64 are met, and
  - (b) which do not carry any rights to conversion into shares or securities other than rights to conversion into shares or securities in the relevant company’s quoted parent company (see subsections (3) to (5)).

Origin: ICTA Sch.18 para.1(5A).

- (2) This subsection applies to any securities –
- (a) which represent a loan including new consideration,

- (b) in relation to which conditions B, C and D in section 65 are met, and
- (c) which do not carry any rights to conversion into shares or securities other than rights to conversion into shares or securities in the relevant company's quoted parent company.

Origin: ICTA Sch.18 para.1(5B).

- (3) For the purposes of this section and sections 64 and 65 a company ("the parent") is the relevant company's quoted parent company if –
  - (a) the relevant company is a 75% subsidiary of the parent,
  - (b) the parent is not a 75% subsidiary of any company, and
  - (c) all the shares making up the parent's ordinary share capital are listed on a recognised stock exchange.

Origin: ICTA Sch.18 para.1(5C).

- (4) Subsection (5) applies for the purposes of subsection (3)(a) if, in determining if the relevant company is a 75% subsidiary of the parent, it is necessary, because of the other provisions of this section or section 64 or 65, to know if the parent is the relevant company's quoted parent company.

Origin: ICTA Sch.18 para.1(5D).

- (5) In determining if the relevant company is a 75% subsidiary of the parent, assume that the parent is the relevant company's quoted parent company.

Origin: ICTA Sch.18 para.1(5D).

*Company's entitlement to profits or assets available for distribution: basic provisions*

## 68 Proportion of profits available for distribution to which company is entitled [4824rm]

- (1) This section applies for the purpose of determining the proportion to which, at the relevant time (see section 71), a company ("company A") is beneficially entitled of any profits available for distribution to the equity holders of another company ("company B").

Origin: ICTA Sch.18 para.2(1).

- (2) The proportion is the proportion to which company A would, at the relevant time, be beneficially entitled on a distribution in money to the equity holders of company B ("the profit distribution") of –
  - (a) an amount of profits equal to company B's total profits of the relevant accounting period (see section 71), or
  - (b) if there are no such total profits, profits of £100.

Origin: ICTA Sch.18 para.2(1).

- (3) It does not matter if any of company B's total profits are not actually distributed.

Origin: ICTA Sch.18 para.2(1).

- (4) If company B is non-UK resident, company B's total profits are calculated as if it were UK resident.

Origin: ICTA Sch.18 para.2(1A).

- (5) For the purposes of the profit distribution, assume that no payment is made by way of repayment of share capital or of the principal secured by any loan unless that payment is a distribution.

Origin: ICTA Sch.18 para.2(2).

- (6) Subject to subsection (5), if an equity holder is entitled, as such, to a payment which (apart from this subsection) would not be a distribution, the equity holder is, nevertheless, treated as entitled to the payment on the profit distribution.

Origin: ICTA Sch.18 para.2(3).

#### **69 Proportion of assets available for distribution to which company is entitled [j4825rm]**

- (1) This section applies for the purpose of determining the proportion to which, at the relevant time (see section 71), a company (“company A”) would be beneficially entitled of any assets available for distribution to the equity holders of another company (“company B”) on a winding up.

Origin: ICTA Sch.18 para.3(1).

- (2) The proportion is the proportion to which company A would be beneficially entitled, at the relevant time, if –
- (a) company B were to be wound up, and
  - (b) on that winding up (“the notional winding up”) the value of assets available for distribution to company B’s equity holders were equal to –
    - (i) amount X minus amount Y, or
    - (ii) if amount X does not exceed amount Y or if company B’s balance sheet is prepared to a date other than the end of the relevant accounting period (see section 71), £100.

Origin: ICTA Sch.18 para.3(1), (2).

- (3) Amount X is the amount of company B’s assets as shown in its balance sheet as at the end of the relevant accounting period.

Origin: ICTA Sch.18 para.3(1).

- (4) Amount Y is the amount of company B’s liabilities as shown in that balance sheet but excluding liabilities to equity holders as such.

Origin: ICTA Sch.18 para.3(1).

- (5) If, on the notional winding up, an equity holder would be entitled, as such, to an amount of assets which (apart from this subsection) would not be a distribution of assets, the equity holder is, nevertheless, treated as entitled to the amount on the distribution of assets on the notional winding up.

Origin: ICTA Sch.18 para.3(3).

- (6) Subsections (7) and (8) apply if –
- (a) an equity holder (“E”) of company B provided new consideration for any shares or securities in company B in relation to which E is an equity holder,

- (b) company B makes a loan to E or any person connected with E or acquires shares or securities in E or any person so connected, and
- (c) in making that loan or acquiring those shares or securities, company B applies, directly or indirectly, an amount (“the returned amount”) corresponding (in whole or in part) to the new consideration.

“Connected” is to be read in accordance with [section 839 of ICTA].

Origin: ICTA Sch.18 para.3(4), (5).

- (7) Reduce amount X by the returned amount.

Origin: ICTA Sch.18 para.3(4); drafting.

- (8) Reduce the amount of assets to which E is beneficially entitled on the notional winding up by the returned amount.

Origin: ICTA Sch.18 para.3(4).

#### 70 Profit and assets available for distribution and company’s entitlement: supplementary [j4807ABrm]

- (1) References to profits or assets available for distribution to equity holders of a company do not include references to any profits or assets available for distribution to any equity holder otherwise than as an equity holder.

Origin: ICTA Sch.18 para.1(1).

- (2) References to a company being beneficially entitled to profits or assets are references to the company being so entitled –
  - (a) directly,
  - (b) through another company or other companies, or
  - (c) partly directly and partly through another company or other companies.

Origin: ICTA Sch.18 para.6.

- (3) If a person is an equity holder in relation to shares or securities as a result of section 63, treat that person (and no other) as being beneficially entitled to any distribution of profits or assets attributable to those shares or securities.

Origin: ICTA Sch.18 para.1(6).

#### 71 Meaning of “the relevant time” and “the relevant accounting period” [j4819Arm]

- (1) “The relevant time” –
  - (a) in the application of this Chapter for the purposes of sections 47(3)(b) (c) and 48(3)(b) and (c), means a time during the overlapping period (see sections 47(4) and 48(4)), and
  - (b) in the application of this Chapter for the purposes of section 55(6)(a) and (b), has the meaning given by section 55(5).

Origin: ICTA Sch.18 para.7(1); drafting.

- (2) For the purpose of determining the proportion of profits or assets to which company A would be beneficially entitled as mentioned in section 68(2) or 69(2) at the relevant time, “the relevant accounting period” is the accounting period of company B in which the relevant time falls.

Origin: ICTA Sch.18 para.7(1).

- (3) If company B is non-UK resident and is not within the charge to corporation tax, in the application of this Chapter for the purposes of section 55(6)(a) and (b) determine the relevant accounting period using the following assumption.

Origin: ICTA Sch.18 para.7(1A); drafting.

- (4) Assume that company B became UK resident (and, therefore, within the charge to corporation tax) at the time it became a 75% subsidiary of company A ignoring section 55(6).

Origin: ICTA Sch.18 para.7(1B), (1C).

*Company's entitlement to profits or assets available for distribution: supplementary*

## 72 Application of sections 73 to 85 etc [j4825Arm]

- (1) Sections 73 to 85 apply for the purpose of determining the proportion of profits or assets to which company A would be beneficially entitled as mentioned in section 68(2) or 69(2) at the relevant time.

Origin: Drafting.

- (2) In those sections –
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),
  - “company A’s proportion” means the proportion of profits or assets to which company A would be beneficially entitled as mentioned in section 68(2) or 69(2) at the relevant time,
  - “distribution rights” means rights in relation to dividends or interest or assets on a winding up, and
  - “the participating equity holders”, in relation to the determining of company A’s proportion, means the equity holders of company B –
    - (a) to whom the profit distribution would be made, or
    - (b) who would be entitled to participate in the notional winding up.

Origin: ICTA s.403G(6), Sch.18 paras.4(1), 5(1), (3), 5B(1), 5F(2); drafting.

## 73 Shares or securities with limited rights [j4826rm]

- (1) This section applies if at the relevant time one or more of the participating equity holders holds, as such, shares or securities with distribution rights that are limited (wholly or partly) by reference to a specified amount or amounts.

Origin: ICTA Sch.18 para.4(1).

- (2) Determine what company A’s proportion would be if all those distribution rights were waived so far as they are so limited.  
The result is referred to as “the alternative proportion”.

Origin: ICTA Sch.18 para.4(2).

- (3) If the alternative proportion is less than what company A's proportion would be ignoring this section, then company A's proportion is taken to be the alternative proportion.

This is subject to sections 78, 79, 81 and 83.

Origin: ICTA Sch.18 para.4(3), (4); drafting.

- (4) For the purposes of subsection (1) a limitation on a right may operate—
- (a) by specifying the capital or amount of profits by reference to which a distribution is calculated, or
  - (b) in any other way.

Origin: ICTA Sch.18 para.4(1).

- (5) But in a case to which section 83 applies (see section 82), limitations that are covered by Case 1 in section 82 are ignored for the purposes of subsection (1).

Origin: ICTA Sch.18 para.4(5).

#### 74 Shares or securities with temporary rights [j4827rm]

- (1) Section 75 applies if, at the relevant time, one or more of the participating equity holders holds, as such, shares or securities—
- (a) which have rights within subsection (2), or
  - (b) in relation to which arrangements within subsection (3) are in place.

Origin: ICTA Sch.18 para.5(1), (3).

- (2) The rights within this subsection are distribution rights of such a kind that if—
- (a) the profit distribution were to be made, or
  - (b) the notional winding up were to occur,
- at a time after the relevant accounting period, the equity holder's entitlement at that time would be different from the equity holder's entitlement at the relevant time.

Origin: ICTA Sch.18 para.5(1).

- (3) The arrangements within this subsection are arrangements of such a kind that if—
- (a) effect were to be given to the arrangements, and
  - (b) the profit distribution were to be made, or the notional winding up were to occur, at a time after the relevant accounting period,

then, as a result of effect being given to the arrangements, the equity holder's entitlement at that time would be different from the equity holder's entitlement at the relevant time.

Origin: ICTA Sch.18 para.5(3).

- (4) The references in subsections (2) and (3) to the equity holder's entitlement at a time are references to the proportion to which the equity holder would be beneficially entitled (as the case may be)—
- (a) of profits on the profit distribution if it were made at that time, or
  - (b) of assets on the notional winding up if it occurred at that time.

Origin: ICTA Sch.18 para.5(1), (3).

**75 Determining company A’s proportion if there are shares etc with temporary rights [j4828rm]**

- (1) If this section applies, determine what company A’s proportion would be if the rights of all participating equity holders at the relevant time were the same as what they would be at the relevant future time.

The result is referred to as “the alternative proportion”.

Origin: ICTA Sch.18 para.5(2).

- (2) For the purposes of subsection (1) –
- (a) “the relevant future time” means the time after the relevant accounting period mentioned in subsection (2) or (3) of section 74 (as the case may be), and
  - (b) assume that effect is given to all arrangements (if any) within subsection (3) of that section.

Origin: ICTA Sch.18 para.5(3); drafting.

- (3) If the alternative proportion is less than what company A’s proportion would be ignoring this section, then company A’s proportion is taken to be the alternative proportion.

This is subject to sections 78, 80, 81 and 83.

Origin: ICTA Sch.18 para.5(4).

**76 Cases in which option arrangements are in place [j4831rm]**

- (1) Section 77 applies if option arrangements are in place at the relevant time.

Origin: ICTA Sch.18 para.5B(1).

- (2) “Option arrangements” means arrangements in relation to which conditions A and B are met.

Origin: ICTA Sch.18 para.5B(1).

- (3) Condition A is that the effect of the arrangements is that there could be a change in –

- (a) the proportion of profits to which any of the participating equity holders would be beneficially entitled on the profit distribution if it were made at a time after the relevant time, or
- (b) the proportion of assets to which any of the participating equity holders would be beneficially entitled on the notional winding up if it occurred at a time after the relevant time.

Origin: ICTA Sch.18 para.5B(2).

- (4) Condition B is that, under the arrangements, the change could result from the exercise of –

- (a) a right to acquire ordinary shares in company B (see section 64) or securities in company B, or
- (b) a right to require a person to acquire such shares or securities.

Origin: ICTA Sch.18 para.5B(3).

- (5) For the purposes of subsection (4) –

- (a) it does not matter whether or not the shares or securities were issued before the arrangements were put in place,
- (b) “right” does not include a right within subsection (6), and
- (c) “securities” does not include normal commercial loans (see section 65).

Origin: ICTA Sch.18 para.5B(4).

- (6) A right is within this subsection if it –
  - (a) is a right of an individual to acquire shares,
  - (b) was obtained because of the individual’s office or employment as a director or employee of company B, and
  - (c) was obtained in accordance with a share option scheme at a time when the scheme was an approved share option scheme.

Origin: ICTA Sch.18 para.5B(4).

- (7) “Share option scheme” means –
  - (a) an SAYE option scheme within the meaning of the SAYE code (see section 516(4) of ITEPA 2003), or
  - (b) a CSOP scheme within the meaning of the CSOP code (see section 521(4) of ITEPA 2003).

Origin: ICTA Sch.18 para.5B(4A).

- (8) “Approved” means –
  - (a) in relation to an SAYE option scheme, approved under Schedule 3 to ITEPA 2003, and
  - (b) in relation to a CSOP scheme, approved under Schedule 4 to ITEPA 2003.

Origin: ICTA Sch.18 para.5B(4A).

## 77 **Determining company A’s proportion if option arrangements in place [j4830rm]**

- (1) If this section applies, take the following steps.

### *Step 1*

Identify all option rights under the option arrangements (or sets of arrangements if more than one) which exist at the relevant time but which have not become effective at or before that time.

“Option rights” means rights of the kind mentioned in section 76(4)(a) or (b) and such a right becomes effective when the shares or securities to which it relates are acquired as a result of its exercise.

### *Step 2*

Identify each possible state of affairs that could subsist at the relevant time if the option rights identified at Step 1, or any of them or any combination of them, became effective at that time.

For this purpose it does not matter if an option right cannot actually become effective at or before the relevant time.

### *Step 3*

Take each state of affairs identified at Step 2 and –

- (a) identify what the rights and duties of the participating equity holders would be at the relevant time if the state of affairs were to subsist at that time, and
- (b) determine what company A's proportion would be if those rights and duties were the rights and duties of the participating equity holders at the relevant time.

*Step 4*

Identify the lowest proportion determined under paragraph (b) of Step 3. That proportion is referred to as “the alternative proportion”.

Origin: ICTA Sch.18 para.5B(1), (5), (6), (7), (8), (9).

- (2) If the alternative proportion is less than what company A's proportion would be ignoring this section, then company A's proportion is taken to be the alternative proportion.

This is subject to sections 79 to 81 and 83.

Origin: ICTA Sch.18 para.5B(10).

**78 Cases in which both sections 73 and 75 apply [j4829rm]**

- (1) This section applies in a case in which sections 73 and 75 apply but section 77 does not.

Origin: ICTA Sch.18 para.5A(1).

- (2) Determine what company A's proportion would be –
  - (a) on the basis mentioned in section 73(2),
  - (b) on the basis mentioned in section 75(1),
  - (c) on those bases taken together, and
  - (d) ignoring sections 73 and 75.

Origin: ICTA Sch.18 para.5A(2).

- (3) Company A's proportion is taken to be the lowest proportion determined under subsection (2).

Origin: ICTA Sch.18 para.5A(3), (4).

**79 Cases in which both sections 73 and 77 apply [j4832rm]**

- (1) This section applies in a case in which sections 73 and 77 apply but section 75 does not.

Origin: ICTA Sch.18 para.5C(1).

- (2) Determine what company A's proportion would be –
  - (a) on the basis mentioned in section 73(2),
  - (b) on the basis mentioned at Step 4 in section 77,
  - (c) on those bases taken together, and
  - (d) ignoring sections 73 and 77.

Origin: ICTA Sch.18 para.5C(2).

- (3) Company A's proportion is taken to be the lowest proportion determined under subsection (2).

Origin: ICTA Sch.18 para.5C(3), (4), (5).

**80 Cases in which both sections 75 and 77 apply [j4833rm]**

- (1) This section applies in a case in which sections 75 and 77 apply but section 73 does not.

Origin: ICTA Sch.18 para.5D(1).

- (2) Determine what company A's proportion would be –
- on the basis mentioned in section 75(1),
  - on the basis mentioned at Step 4 in section 77,
  - on those bases taken together, and
  - ignoring sections 75 and 77.

Origin: ICTA Sch.18 para.5D(2).

- (3) Company A's proportion is taken to be the lowest proportion determined under subsection (2).

Origin: ICTA Sch.18 para.5D(3), (4), (5).

**81 Cases in which sections 73, 75 and 77 all apply [j4834rm]**

- (1) This section applies in a case in which sections 73, 75 and 77 all apply.

Origin: ICTA Sch.18 para.5E(1).

- (2) Determine what company A's proportion would be –
- on the basis mentioned in section 73(2),
  - on the basis mentioned in section 75(1),
  - on the basis mentioned at Step 4 in section 77,
  - on the bases mentioned in sections 73(2) and 75(1) taken together,
  - on the bases mentioned in section 73(2) and at Step 4 in section 77 taken together,
  - on the bases mentioned in section 75(1) and at Step 4 in section 77 taken together,
  - on the bases mentioned in section 73(2), section 75(1) and at Step 4 in section 77 taken together, and
  - ignoring sections 73, 75 and 77.

Origin: ICTA Sch.18 para.5E(2).

- (3) Company A's proportion is taken to be the lowest proportion determined under subsection (2).

Origin: ICTA Sch.18 para.5E(3), (4), (5).

**82 Cases in which surrendering or claimant company is non-UK resident [j4835rm]**

- (1) If the surrendering company or the claimant company is non-UK resident at the relevant time, section 83 applies as mentioned in subsections (2) and (3) in the cases set out in subsection (4).

Origin: ICTA Sch.18 para.5F(1).

- (2) Section 83 applies in the application of this Chapter for the purposes of sections 47(3)(b) and (c) and 48(3)(b) and (c) if the non-UK resident company is owned by the consortium at the relevant time.

Origin: ICTA Sch.18 para.5F(1).

- (3) Section 83 applies in the application of this Chapter for the purposes of section 55(6)(a) and (b) in determining if the non-UK resident company is a 75% or 90% subsidiary of another company at the relevant time.

But section 83 is not to be applied in determining if the EEA group condition is met (see section 40) at the relevant time.

Origin: ICTA Sch.18 para.5F(1).

- (4) The cases in which section 83 applies are as follows.

*Case 1*

One or more of the participating equity holders holds, as such, shares or securities with distribution rights that have effect (wholly or partly) by reference to whether or not, or to what extent, the profits or assets distributed are referable to company B's UK trade (see section 85).

*Case 2*

Section 77 applies and any of the proportions to be determined under paragraph (b) of Step 3 in that section would differ according to whether or not, or to what extent, the profits or assets distributed are referable to company B's UK trade.

Origin: ICTA Sch.18 para.5F(2), (3).

**83 Determining company A's proportion if non-UK resident involved [j4836rm]**

- (1) If this section applies –
- (a) go to subsection (2) if the case is one in which none of sections 73, 75 and 77 applies, and
  - (b) go to subsection (3) if the case is one in which any of sections 73, 75, 77 and 78 to 81 applies.

Origin: ICTA Sch.18 para.5F(4), (5), (6).

- (2) If the case is as mentioned in subsection (1)(a) –
- (a) determine what company A's proportion would be using the assumptions set out in section 84, and
  - (b) if the proportion so determined ("the alternative proportion") is less than what company A's proportion would be ignoring this section, then company A's proportion is taken to be the alternative proportion.

Origin: ICTA Sch.18 para.5F(4), (5).

- (3) If the case is as mentioned in subsection (1)(b), take the following steps.  
"The applicable section" means whichever of sections 73, 75, 77 and 78 to 81 applies.

*Step 1*

Determine, in each way required by the applicable section, what company A's proportion would be ignoring this section.

A proportion determined at this step is referred to as a “normal proportion”.

*Step 2*

Determine, in each way required by the applicable section, what company A’s proportion would be using the assumptions set out in section 84.

A proportion determined at this step is referred to as an “alternative proportion”.

*Step 3*

If an alternative proportion determined in a required way is less than the normal proportion determined in that way, for the purposes of the applicable section use the alternative proportion instead of the normal proportion.

Origin: ICTA Sch.18 para.5F(6).

**84 Assumptions to be applied if non-UK resident company involved [j4837rm]**

The assumptions referred to in section 83 are as follows.

*Assumption 1*

The profit distribution or the distribution on the notional winding up is confined to a distribution of the profits or assets referable to company B’s UK trade (see section 85).

*Assumption 2*

Section 68(2) is to be applied as if the reference to company B’s total profits were a reference to those profits only so far as they are referable to company B’s UK trade.

*Assumption 3*

Section 69(3) and (4) is to be applied as if the references to company B’s assets and liabilities were references to those assets and liabilities only so far as they are referable to company B’s UK trade.

*Assumption 4*

None of the ordinary equity holders has a beneficial entitlement to the profits or assets referable to company B’s UK trade that is greater than the proportion of the distribution in question to which the equity holder would be beneficially entitled –

- (a) if Assumptions 1 to 3 were ignored, and
- (b) if it would otherwise be less, the distribution were £100.

“Ordinary equity holder” means an equity holder whose beneficial entitlement on the profit distribution or the distribution on the notional winding up does not differ according to whether or not, or the extent to which, the profits or assets distributed are referable to company B’s UK trade.

Origin: ICTA Sch.18 para.5F(6), (7), (8), (9); drafting.

**85 Assets etc referable to UK trade [j4838rm]**

Profits, assets or liabilities of company B are referable to company B’s UK trade so far as they –

- (a) are attributable to, or used for the purposes of, activities the income or chargeable gains from which are or (if there were any) would be

- brought into account in calculating company B’s total profits of any accounting period, and
- (b) are not attributable to, or used for the purposes of, activities which are double taxation exempt for any accounting period (see section 86).

Origin: ICTA Sch.18 para.5F(10).

## CHAPTER 7

### DEFINITIONS AND MISCELLANEOUS PROVISIONS

#### *Definitions*

#### **86 Meaning of “double taxation exempt” activities [j4808Crm]**

- (1) For the purposes of this Part activities of a company are double taxation exempt for an accounting period if, because of double taxation arrangements, the income and chargeable gains (if any) arising for that period from the activities are to be ignored in determining the company’s net profits for that period.

Origin: ICTA s.403D(7), Sch.18 para.5F(10).

- (2) In determining if any activities are double taxation exempt, assume that any claim that must be made before effect is given to any provision of double taxation arrangements is made.

Origin: ICTA s.403D(10), Sch.18 para.5F(10).

- (3) “Double taxation arrangements” means arrangements under section 788 of ICTA.

Origin: s.403D(8).

#### **87 Meaning of “non-UK tax” [j4808Drm]**

- (1) In this Part “non-UK tax” means a tax chargeable under the law of a territory outside the United Kingdom which—
- (a) is charged on income and corresponds to United Kingdom income tax, or
- (b) is charged on income or chargeable gains or both and corresponds to United Kingdom corporation tax.

Origin: ICTA s.403D(9), s.403E(7), Sch.18A para.17(1), (2).

- (2) A tax is not outside the scope of subsection (1) just because it—
- (a) is chargeable under the law of a province, state or other part of a country, or
- (b) is levied by or on behalf of a municipality or other local body.

Origin: ICTA s.403D(9), s.403E(7), Sch.18A para.17(3).

#### **88 Other definitions that apply for the purposes of the Part [j4800Arm]**

In this Part—

- “the claimant company” has the meaning given by section 34(1) or 39(1) (as the case may be),
- “the claim period” has the meaning given by section 34(1) or 39(1) (as the case may be),
- “company” means any body corporate,
- “group relief” has the meaning given by section 1(2),
- “surrenderable amounts” has the meaning given by section 3(5) or 17(1) (as the case may be),
- “the surrendering company” has the meaning given by section 3(1) or 16(1) (as the case may be),
- “the surrender period” has the meaning given by section 3(1) or 17(1) (as the case may be), and
- “trade” includes an office.

Origin: ICTA s.6(4), s.413(2); drafting.

*Miscellaneous*

**89 Payments for group relief [j4800Erm]**

- (1) This section applies if –
- the surrendering company and the claimant company have an agreement between them in relation to losses and other amounts of the surrendering company,
  - group relief is given to the claimant company in relation to those losses and other amounts, and
  - as a result of the agreement the claimant company makes a payment to the surrendering company that does not exceed the total amount of the group relief given.

Origin: ICTA s.402(6).

- (2) The payment –
- is not to be taken into account in determining the income and chargeable gains of either company for corporation tax purposes, and
  - for corporation tax purposes is not to be regarded as a distribution.

Origin: ICTA s.402(6); drafting.

**90 References to “allowance” in CAA 2001 [j4800Frm]**

References in CAA 2001 (apart from Parts 6 and 10) to an allowance include references to an allowance which would be made –

- but for the giving of group relief, or
- but for that and for a lack of profits or other income.

Origin: ICTA s.411(10).