

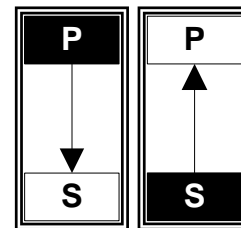
Part 1: Group relief

Overview

1. This Part sets out the rules for group relief.
2. In the diagrams to the right of the text of this commentary, surrendering companies are shown in black; claimant companies are shown in white; and other companies are shown in grey.

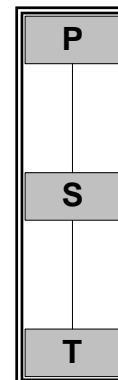
Groups

3. The basic idea of group relief is allow an enterprise to be taxed as a single unit even if it is carried on by more than one company. So, in the simplest case, a loss made by a parent company (P) may be set off against the profits of a wholly-owned subsidiary (S). Similarly, a loss made by the subsidiary may be set off against the parent’s profits.



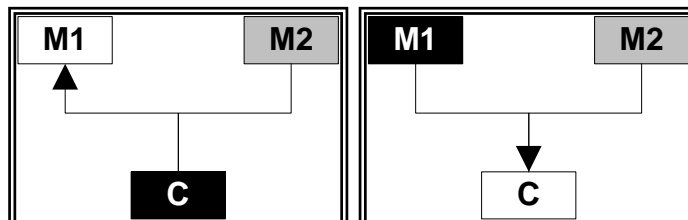
4. If one company is to surrender its losses to another, the two companies must be in the same group. In the case of a simple parent/subsidiary relationship, the definition in clause 56 specifies that one company must be a “75% subsidiary” of the other.

5. In a less simple case, more than two companies may be involved. The group comprises all the companies that are 75% subsidiaries of a parent company, and the parent itself. The definition of “75% subsidiary” in section 838 of ICTA makes clear that the necessary degree of ownership may be indirect. So, for instance, if P owns 75% of the shares in S and S owns all the shares in T, T is a 75% subsidiary of P and all three companies are members of a group.

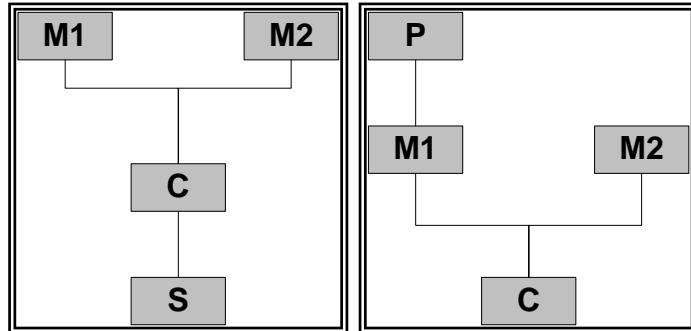


Consortiums

6. If the shares in a single company (C) are held by other companies (M1, M2 etc), C may be a “company owned by a consortium”. In that case, losses of C may be set off against the profits of M1, M2 etc. And the losses of M1, M2 etc may be set off against the profits of C.



7. If C is also a member of a group (with its subsidiary S) it may be possible for losses to flow between members of the group and M1, M2 etc. And if M1 is a member of a group (with its parent P) it may be possible for losses to flow between members of that group and C.



International

8. In the simplest case, all the companies involved are resident in the United Kingdom and carry on their businesses wholly in the United Kingdom. But the relief is extended to include the losses of:

- some companies not resident in the United Kingdom that carry on a trade through a permanent establishment in the United Kingdom; and
- some companies resident in the EEA (or carrying on a trade through a permanent establishment there).

9. And the relief is restricted in some cases if a UK resident company's business is not carried on wholly in the United Kingdom.

Other reliefs

10. In addition to trading losses, some other reliefs may be surrendered by one company to another. The other reliefs are listed in clause 3(1).

Equity holders

11. In some cases a simple test of shareholding does not accurately reflect the economic reality of the relationship between companies. So there are rules in Chapter 6 of this Part to establish the true economic relationship.

Chapter 1: Overview

Overview

12. This Chapter introduces the Part.

Clause 1: Overview of Part

13. This clause sets out the structure of the Part. It is new.

Chapter 2: Surrender of company's losses etc for an accounting period

Overview

14. This Chapter sets out what relief is available and the main restrictions on relief.

Clause 2: Overview of Chapter

15. This clause sets out the structure of the Chapter. It is new.

Clause 3: Surrendering of losses and other amounts

16. This clause lists the losses and other amounts that may be surrendered as group relief. It is based on sections 402 and 403 of ICTA.

17. In ICTA the amounts are referred to as “trading losses and other amounts eligible for relief”. The trading losses are explained in section 403ZA of ICTA. The “other amounts” are explained in sections 403ZB (excess capital allowances), 403ZC (non-trading deficit on loan relationships) and 403ZD (charges, Schedule A losses, management expenses and non-trading loss on intangible fixed assets).

18. This clause adopts a similar approach by specifying the losses and other amounts that may be subject to a group relief claim. There is a more detailed explanation of each of those losses and other amounts in clauses 4 to 8.

19. *Subsection (2)* uses a test of whether the losses and other amounts are “eligible for corporation tax relief”.

20. *Subsections (3) and (4)* contrast the treatments of:

- amounts within paragraphs (a) to (c) of subsection (1), which may be surrendered whatever the profits of the surrendering company; and
- amounts within paragraphs (d) to (g) of subsection (1), which may be surrendered only to the extent that they exceed the surrendering company’s gross profits (the amount B in clause 9(6)).

21. *Subsection (5)* refers to the other restrictions on amounts that may be surrendered in clauses 10 to 13. It also refers to the restrictions in section 403(4) of ICTA that operate by making amounts not available for set off.

22. The other restrictions mentioned in section 403(4) of ICTA, which are in sections 492(8) and 494 of ICTA (concerning oil-related activities), operate either by reference to the relief that may be claimed or in calculating the surrendering company’s “gross profits”. Those other restrictions are referred to in clauses 9(7) and 41(3)(e).

23. *Subsection (6)* introduces the label “surrenderable amounts” to refer to the losses and other amounts that may be surrendered.

24. *Subsection (7)* includes the requirement (in Schedule 18 to FA 1998) that the surrendering company must consent to the surrender. We think it is helpful to include this requirement in the basic rules. Clause 34(2) requires that there is also a claim.

25. Sections 46 to 57 of FA 2005 deal with “alternative financial arrangements”. In some circumstances section 52 of FA 2005 denies a company a deduction in respect of a “relevant return” which it pays. If the relevant return would otherwise have been taken into account in calculating a trading profit (or any other component of the company’s profits), the trading loss etc that may be surrendered as group relief is accordingly reduced by the amount of the relevant return. If the relevant return is not taken into account in calculating part of the company’s profits (perhaps because it arises from an isolated transaction), it is not a “surrenderable amount”. So this Bill does not rewrite section 52(6) of FA 2005, which explicitly denies group relief for a relevant return within section 52 of FA 2005.

Clause 4: Meaning of “trading loss”

26. This clause explains which trading losses are available for relief. It is based on section 403ZA of ICTA.

27. *Subsection (1)* is the link to the basic rule in clause 3(1)(a).

28. *Subsection (2)* excludes from the available losses:

- losses made in a trade carried on wholly outside the United Kingdom (the profits of which are charged in the source legislation to tax under Schedule D Case V); and
- non-commercial losses for which relief would not be available to the surrendering company under the loss relief rules [not in this print].

29. This clause does not rewrite the requirement in section 403ZA(1) of ICTA that a trading loss is calculated in the same way as a loss within section 393A of ICTA. This is because the requirement is already rewritten in [clause 54[j030302] of Bill 5].

Clause 5: Meaning of “capital allowance excess”

30. This clause explains which capital allowances are available for relief. It is based on section 403ZB of ICTA.

31. *Subsection (1)* is the link to the basic rule in clause 3(1)(b). It identifies the capital allowances as those to be given in a trade of “special leasing”.

32. A company may surrender the allowances which would otherwise be available for relief against its total profits under section 260 of CAA.

33. *Subsections (3)* and *(4)* set out how to deal with “special leasing” allowances that are brought forward:

- the amount to be surrendered is limited to the allowances for the current period, without regard to any allowances brought forward; and

- in calculating the excess of allowances over the leasing income of the current period, the amount of the income is not reduced by allowances brought forward.

Clause 6: Meaning of “UK property loss”

34. This clause explains which property income losses are available for relief. It is based on section 403ZD(3) of ICTA.

35. *Subsection (1)* is the link to the basic rule in clause 3(1)(e).

36. *Subsection (2)* makes clear that a loss brought forward under the loss relief rules [not in this print] is not available even though that clause treats the loss as made in the surrender period.

37. A non-commercial property loss is not eligible for relief under the loss relief rules [not in this print]. So it is not “eligible for corporation tax relief (apart from this Part)” – see clause 3(2). It follows that such a loss may not be surrendered as group relief and there is no need explicitly to rewrite section 403ZD(3)(b) of ICTA.

Clause 7: Meaning of “management expenses”

38. This clause explains which management expenses are available for relief. It is based on section 403ZD(4) of ICTA.

39. *Subsection (1)* is the link to the basic rule in clause 3(1)(f).

40. *Subsection (2)* excludes from the available management expenses amounts brought forward from an earlier period under:

- section 75(9) of ICTA (excess management expenses); or
- the property loss rules [not in this print].

Clause 8: Meaning of “non-trading loss on intangible assets”

41. This clause explains that a non-trading loss that is available for relief is one calculated under Schedule 29 to FA 2002. It is based on section 403ZD(6) of ICTA.

42. *Subsection (1)* is the link to the basic rule in clause 3(1)(g).

43. *Subsection (2)* excludes from the available loss amounts brought forward from an earlier period.

Clause 9: Restriction on surrender of losses etc within section 3(1)(d) to (g)

44. This clause sets out a special rule which applies only to “relevant amounts”. They are:

Corporation tax: Bill 6
Group relief
October 2007: Committee paper CC/SC (07) 27

- charges;
- a UK property business loss;
- management expenses; and
- a non-trading loss on intangible assets.

45. The clause is based on section 403(3) of ICTA.

46. *Subsection (1)* introduces the “relevant amounts” to which the clause applies. The “relevant amounts” do not include the main reliefs (trading losses, excess capital allowances and non-trading loan relationships deficits), which may be surrendered even if the surrendering company has profits against which the main reliefs may be set.

47. *Subsections (2) and (3)* are the main rule: the relevant amounts are available only to the extent that they cannot be deducted from the surrendering company’s own profits.

48. *Subsection (4)* deals with the case where the reliefs are restricted. In that case, the subsection determines the make-up of the relief that is surrendered.

49. *Subsections (5) and (6)* define the amounts A and B of the surrendering company which are used in subsection (3) to determine the extent to which the relevant amounts exceed the company’s profits.

50. In the case of amount B, the use of the expression “total profits” makes clear that the amount for the surrender period is “gross”: that is, before the deduction of:

- any of the reliefs in clause 3(1)(a) to (g);
- management expenses (or losses of a ceased property business) brought forward; or
- losses of any other period.

51. So the detail of section 403ZE(1) of ICTA is not rewritten in this clause.

52. *Subsection (7)* refers to one of the restrictions in section 403(4) of ICTA. The other restrictions are in clauses 3(5) and 41(3)(e).

Clause 10: Restriction on losses etc that may be surrendered by UK resident

53. This clause eliminates from group relief some amounts that are attributable to a foreign permanent establishment. It is based on section 403E of ICTA.

Corporation tax: Bill 6
Group relief
October 2007: Committee paper CC/SC (07) 27

54. In most cases the profits of a foreign permanent establishment are taxed in the country where the permanent establishment is. The profits remain chargeable to United Kingdom tax but credit is given for foreign tax on the profits. If the permanent establishment is not profitable relief may be available for the loss etc in the foreign country. This clause prevents relief being given for the same loss etc both in the foreign country and in the United Kingdom.

55. *Subsection (1)* restricts the operation of the clause to companies resident in the United Kingdom.

56. *Subsection (2)* sets out the basic rule: a loss or other amount attributable to a foreign permanent establishment is not available for group relief if it qualifies for relief from non-UK tax.

57. *Subsections (3) and (4)* set out how to calculate the loss etc of a foreign permanent establishment. The calculation is done on the same basis as that for the calculation of the losses etc of a United Kingdom permanent establishment.

58. *Subsection (5)* explains the sort of relief from non-UK tax with which the clause is concerned: it is relief from tax in the country where the permanent establishment is; and the relief is against the non-UK profits (defined in clause 12) of any person other than the surrendering company. In other words, the clause is concerned with foreign group relief.

59. *Subsections (6) to (8)* resolve a potential circularity in the rules. Foreign tax rules may deny relief for an amount if it qualifies for relief from United Kingdom tax. In that case, it would not be clear how the rule in subsection (5) applies.

60. The circularity is resolved by assuming that the foreign tax law does not depend on the United Kingdom tax treatment. So relief is assumed to be given in the country where the permanent establishment is and not in the United Kingdom.

61. *Subsection (9)* ensures that the restriction for the losses etc of foreign permanent establishments does not apply to life assurance businesses.

Clause 11: Restriction on losses etc that may be surrendered by non-UK resident

62. This clause eliminates from group relief amounts that arise from activities that are not within the United Kingdom tax net, or are relieved abroad. It is based on section 403D of ICTA.

63. *Subsection (1)* restricts the operation of the clause to companies not resident in the United Kingdom that carry on a trade through a permanent establishment in the United Kingdom.

64. *Subsection (2)* introduces the three conditions (A, B and C) that have to be met if the non-resident company is to be able to surrender group relief.

Corporation tax: Bill 6
Group relief
October 2007: Committee paper CC/SC (07) 27

65. *Subsection (3)* sets out Condition A. The activities of the company must bring it within the charge to corporation tax. So its business must be carried on through a permanent establishment in the United Kingdom (see [clause 22[j8150] of Bill 5]).

66. *Subsection (4)* sets out Condition B. A company may be within the charge to corporation tax because it carries on its business through a permanent establishment in the United Kingdom but those activities (for instance, those of an airline) may be exempt from United Kingdom tax as a result of a double taxation arrangement. In that case, any losses arising from the exempt activities may not be surrendered as group relief.

67. *Subsections (5) and (6)* set out Condition C. A loss or other amount attributable to a United Kingdom permanent establishment is not available for group relief if it qualifies for relief from non-UK tax.

68. *Subsection (7)* explains how Condition C works if a foreign tax system (such as those of France and Australia) operates by exempting foreign (in this case, United Kingdom) profits from tax in the foreign country. Such a system may need to calculate the United Kingdom profits in order to exempt them. But that calculation does not mean that the profits in question are the subject of foreign tax *relief*.

69. *Subsections (8) and (9)* resolve a potential circularity in the rules. Foreign tax rules may deny relief for an amount if it qualifies for relief from United Kingdom tax. In that case, Condition C cannot be applied. One apparently needs to know before applying the subsection whether United Kingdom relief is available.

70. The circularity is resolved by assuming that the foreign tax law does not depend on the United Kingdom tax treatment. So relief is assumed to be given in the company's country of residence and not in the United Kingdom.

Clause 12: Meaning of “non-UK profits”

71. This clause defines “non-UK profits” for clauses 10 and 11. It is based on sections 403D and 403E of ICTA.

72. *Subsections (1) and (2)* set out the basic rule. The profits are those that are charged to “non-UK tax” (see clause 87). The definition includes amounts that are taken into account in calculating those profits. But it does not include any profits that are taken into account in calculating the profits of any person for United Kingdom tax purposes.

73. *Subsection (3)* deals with profits that are exempted from United Kingdom tax by a double taxation arrangement. Such profits may be non-UK profits. Subsection (2) refers to the “total profits” of any person. That expression is defined (for corporation tax) in the tax calculation clause [not in this print] to include only amounts charged to corporation tax. So there is no need to exclude non-chargeable profits and section 403D(2)(a) of ICTA is not rewritten in this clause.

Clause 13: Restriction on losses etc that may be surrendered by dual resident

74. This clause restricts the relief available to dual resident investing companies. It is based on section 404 of ICTA.

75. *Subsections (1) and (2)* are the basic rule. A company that is resident both in the United Kingdom and in another country may not surrender losses etc as group relief. But the rule applies only to investing companies, a concept that is defined in the following subsections.

76. *Subsection (3)* defines the first sort of company to which the clause applies. It is a company that does not carry on a trade.

77. *Subsection (4)* defines the second sort of company to which the clause applies. It is a trading company whose activities are of a sort more usually associated with an investment business.

78. *Subsection (5)* defines the third sort of company to which the clause applies. The rule prevents an investing company being “dressed up” as a trading company.

Chapter 3: Surrender of losses etc by non-UK resident company connected with the EEA

Overview

79. This Chapter makes the United Kingdom group relief rules compatible with European Community law following the judgment in *Marks and Spencer plc v Halsey*, C446/03. That case decided that in some circumstances it is contrary to the provisions of the EC Treaty on freedom of establishment to deny group relief to a UK resident parent for the losses of a non-UK resident subsidiary.

80. So FA 2006 introduced rules to allow relief for foreign losses. But there are two main restrictions:

- The surrendering company must be resident in (or otherwise “related” to) an EEA territory.
- The losses must not qualify for relief in the EEA territory.

Clause 14: Overview of Chapter

81. This clause sets out the structure of the Chapter. It is new.

Clause 15: EEA related definitions

82. This clause defines the expressions that are used in the Chapter to describe the connection of companies and their profits to the EEA. It is based on section 402 of and Schedule 18A to ICTA. The EEA comprises:

Austria	Greece	Netherlands
Belgium	Hungary	Norway

Corporation tax: Bill 6
Group relief
October 2007: Committee paper CC/SC (07) 27

Bulgaria	Iceland	Poland
Cyprus	Ireland	Portugal
Czech Republic	Italy	Romania
Denmark	Latvia	Slovak Republic
Estonia	Liechtenstein	Slovenia
Finland	Lithuania	Spain
France	Luxembourg	Sweden
Germany	Malta	United Kingdom

Clause 16: Steps to be taken in determining extent to which loss etc can be surrendered

83. This clause is a method statement for calculating how much of an “EEA amount” may be surrendered. It is based on section 403F of and paragraph 11 of Schedule 18A to ICTA.

84. *Step 1* eliminates any amount that is within the United Kingdom tax net and available for surrender under the rules in Chapter 2.

85. *Step 2* sets out the conditions that the EEA amount has to meet. The detail of the conditions is set out in clauses 18 to 25. To the extent that the EEA amount meets these conditions it is the “qualifying part of the EEA amount”.

86. *Step 3* requires the EEA amount to be recalculated using United Kingdom tax rules and the assumptions set out in clauses 28 to 31.

87. *Step 4* compares the qualifying part of the EEA amount with the same proportion of the EEA amount recalculated in Step 3. The lower amount is the amount that may be surrendered.

88. *Step 5* requires a restriction for any amount excluded from relief by clause 32 (arrangements).

Clause 17: Surrendering of losses and other amounts

89. This clause is the rule that allows an EEA related company to surrender a loss or other amount. It is based on section 402 of and paragraph 11 of Schedule 18A to ICTA and paragraph 70 of Schedule 18 to FA 1998.

90. *Subsection (1)* introduces the rule that applies in cases where the EEA related company has losses or other amounts available for surrender (as determined under clause 16).

91. *Subsection (2)* requires consent to the surrender. This rule corresponds to the rule in clause 3(7) for UK related companies.

92. *Subsection (3)* defines “assumed accounting period”. This is necessary because only a company within the charge to corporation tax has an accounting period (see [Chapter 2 of Part 2 of Bill 5]).

Clause 18: The equivalence condition

93. This clause requires the EEA amount to correspond to an amount that would qualify for United Kingdom group relief. It is based on paragraph 2 of Schedule 18A to ICTA.

Clause 19: The EEA tax loss condition: companies resident in EEA territory

94. This clause identifies the EEA amount as one calculated in accordance with the relevant foreign tax law. It is based on paragraph 3 of Schedule 18A to ICTA.

95. *Subsection (1)* applies the clause to companies resident in the EEA. The other sort of EEA related companies (those with an EEA permanent establishment) are dealt with in clause 20.

96. *Subsection (2)* introduces subsections (3) and (5).

97. *Subsections (3)* and *(4)* set out the main condition: they establish that the Chapter is concerned with an amount that has arisen for tax purposes in an EEA territory.

98. *Subsection (5)* excludes an amount that is attributable to a permanent establishment in the United Kingdom. Such an amount may qualify for relief under the rules in Chapter 2 (see the definition of “UK related” in clause 38).

Clause 20: The EEA tax loss condition: companies not resident in EEA territory

99. This clause identifies the EEA amount in the case of a company with a permanent establishment in the EEA. It is based on paragraph 4 of Schedule 18A to ICTA.

100. *Subsection (1)* applies the clause to companies not resident in the EEA. The other sort of EEA related companies (those resident in the EEA) are dealt with in clause 19.

101. *Subsection (2)* introduces subsections (3) and (5).

102. *Subsections (3)* and *(4)* set out the main condition: they establish that the Chapter is concerned with an amount that has arisen for tax purposes in an EEA territory.

103. *Subsection (5)* excludes an amount that arises from activities the profits of which would be exempt under a double taxation arrangement.

104. *Subsection (6)* introduces subsections (7) and (8), which explain the sort of arrangements with which subsection (5) is concerned.

105. *Subsection (7)* sets out the relevant arrangements: they are arrangements between the EEA territory where the permanent establishment is and:

- the United Kingdom (paragraph (b)); or
- any other territory (paragraph (a)).

106. *Subsection (8)* identifies the effect of the double taxation arrangements: it is that any profits from the activities in question would be exempt from tax in the EEA territory.

Clause 21: The qualifying loss condition: general

107. This clause introduces the rules which exclude from the EEA amount any amount that qualifies for relief abroad. It is based on paragraphs 5, 6 and 7 of Schedule 18A to ICTA.

108. *Subsection (1)* makes clear that the EEA amount must meet the conditions in all of clauses 22 to 24. Those conditions are expressed in the negative. So the conditions are met if foreign relief is *not* available.

109. *Subsection (2)* identifies the “relevant non-UK tax” as any foreign tax charged in the relevant EEA territory or in any territory where the surrendering company is resident.

110. *Subsection (3)* identifies the “other relevant territory” as any territory in which the surrendering company is resident, apart from the EEA territory in which the EEA amount arises.

Clause 22: The qualifying loss condition: relief for EEA accounting period and previous periods

111. This clause sets out the condition that relief is not available for the current period or for a previous period. It is based on paragraph 6 of Schedule 18A to ICTA.

112. *Subsection (1)* introduces the clause.

113. *Subsection (2)* deals with any part of the EEA amount that is deductible in calculating profits. The profits are those of any person (not just the surrendering company). And, for the purpose of this clause, one looks at the current period and any previous period.

114. *Subsection (3)* is similar to subsection (2) but is concerned with relief that is available in a way other than as a deduction in calculating profits.

115. *Subsection (4)* makes clear that the clause is concerned with whether the relief is available, not with whether it is actually given: the condition cannot be met simply by failing to make any necessary claim for relief.

Clause 23: The qualifying loss condition: relief for future periods

116. This clause sets out the condition that relief is not available for subsequent periods. It is based on paragraph 7 of Schedule 18A to ICTA.

117. *Subsection (1)* introduces the clause.

118. *Subsection (2)* deals with any part of the EEA amount that may be deductible in calculating profits in any future period. The profits are those of any person (not just the surrendering company).

119. *Subsection (3)* is similar to subsection (2) but is concerned with relief that is available in a way other than as a deduction in calculating profits.

120. *Subsection (4)* determines that the possibility of foreign tax relief is to be considered as at the end of the period in which the EEA amount arises.

Clause 24: The qualifying loss condition: other relief

121. This clause sets out the condition that relief is not available in any territory. It is based on paragraph 8 of Schedule 18A to ICTA.

122. *Subsection (1)* introduces the clause.

123. *Subsection (2)* deals with any part of the EEA amount that may be deductible in calculating profits. The profits are those of any person (not just the surrendering company). Unlike clauses 22 and 23, this clause deals with tax relief in a territory which is neither the EEA territory where the EEA amount arises nor the territory where the surrendering company is resident. And it is concerned only with relief that has been given, not with relief that may be given.

124. *Subsection (3)* is similar to subsection (2) but is concerned with relief that is available in a way other than as a deduction in calculating profits.

125. *Subsection (4)* makes clear that the clause is not concerned with tax relief in the EEA territory where the EEA amount arises. That relief is dealt with in clause 22 or 23.

Clause 25: The precedence condition

126. This clause deals with the possibility that relief is available in more than one territory. It is based on paragraph 9 of Schedule 18A to ICTA.

127. Suppose there is a chain of companies with a “top” holding company, a “bottom” trading company and a series of other companies each of which is both a

subsidiary and a holding company. If the companies are resident in a variety of territories, where there are rules equivalent to this Chapter of the Bill, it is possible for the losses of the “bottom” trading company to be relievable in several territories.

128. The clause resolves the problem by providing that relief is assumed to be given at the lowest possible level in the chain. If the company at that level is UK resident group relief is available.

129. *Subsection (1)* introduces the idea that relief may be available in a territory that is neither the United Kingdom nor the territory where the EEA amount arises.

130. *Subsection (2)* describes the chain of companies. Paragraph (a) establishes that the company in question is in the chain. Paragraph (b) establishes that higher in the chain there is a UK resident company. Paragraph (c) establishes that the surrendering company is a subsidiary of that UK resident company. Paragraph (d) establishes that there is no other UK resident company in the chain between the surrendering company and the company in question.

131. If relief is available to the company in question it is excluded from the EEA amount.

132. *Subsection (3)* sets out the sorts of relief with which the clause is concerned: they are the same as those in clause 22(2) (a direct deduction) and (3) (other relief).

Example

A UK resident company U1 owns all the share capital in N, a company resident in the Netherlands.

N owns all the share capital in U2, a UK resident company.

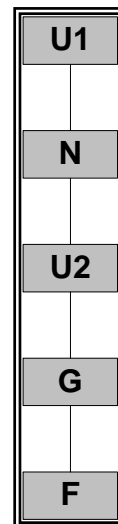
U2 owns all the share capital in G, a company resident in Germany.

G owns all the share capital in F, a company resident in the France.

U1 claims group relief for F’s losses.

Subsection (2) of the clause applies to G because:

- (a) it is resident in Germany (not the relevant EEA territory, which is France);
- (b) U2 owns (directly) share capital in G;
- (c) F is a 75% subsidiary of U2; and
- (d) F is not a subsidiary of U2 as a result of its being a 75% subsidiary of another UK resident company.



So Germany is a territory within subsection (2). If relief for F’s loss is available in Germany no group relief is available. G’s potential claim takes precedence over U1’s claim because G is lower in the chain.

But, in relation to N:

Corporation tax: Bill 6
Group relief
October 2007: Committee paper CC/SC (07) 27

- (a) it is resident in the Netherlands (not the relevant EEA territory, which is France);
- (b) the only UK resident company that owns share capital in N is U1;
- (c) F is a 75% subsidiary of U1; but
- (d) F is a subsidiary of U1 only as a result of its being a 75% subsidiary of another UK resident company (U2).

So the Netherlands is not a territory within subsection (2). Even if relief for F's loss is available in the Netherlands group relief may be available. U2's potential claim takes precedence over N's because U2 is lower in the chain.

Clause 26: Rules for recalculating EEA amount

133. This clause requires the EEA amount to be recalculated using United Kingdom tax rules. It is based on paragraph 16 of Schedule 18A to ICTA.

134. If the recalculation results in a lower amount, the recalculated amount (or the relevant proportion of it) is the amount that may be surrendered as group relief (see Step 4 in clause 16).

135. *Subsection (1)* is the basic rule. The EEA amount is recalculated. Furthermore, any rule that would disallow the amount for United Kingdom tax purposes (such as the rule about non-commercial losses) is applied.

136. *Subsections (2) to (4)* allow the Treasury to make regulations about the recalculation of the EEA amount.

Clause 27: Assumptions to be made in recalculating EEA amount

137. This clause introduces clauses 28 to 31. It is new.

Clause 28: Assumptions as to UK residence

138. This clause is the first of three sets of assumptions to be made in recalculating the EEA amount using United Kingdom tax rules. It is based on paragraph 12 of Schedule 18A to ICTA.

139. *Subsection (1)* requires the assumption that the surrendering company is resident in the United Kingdom.

140. *Subsection (2)* makes clear that the assumption in subsection (1) does not:

- affect where the company's activities are carried on (but clause 29 may make an assumption about that); or
- treat the company as ceasing to be UK resident at the end of the EEA accounting period (but clause 30 treats the company's accounting period as ending then).

141. *Subsection (3)* requires the assumption that the surrendering company becomes UK resident at the beginning of the EEA accounting period.

Clause 29: Assumptions as to places in which activities carried on

142. This clause is the second of three sets of assumptions to be made in recalculating the EEA amount using United Kingdom tax rules. It is based on paragraph 13 of Schedule 18A to ICTA.

143. *Subsection (1)* requires the assumption that the company's activities are carried on in the United Kingdom instead of in the EEA territory. So any special rules about foreign income do not apply.

144. *Subsection (2)* makes clear that the assumption in subsection (1) includes the assumption that any land held by the surrendering company is in the United Kingdom.

145. *Subsection (3)* explains how the United Kingdom concepts of law in subsection (2) ("estate", "interest" and "rights") are to be applied to land that is outside the United Kingdom.

Clause 30: Assumed accounting periods

146. This clause is the third of three sets of assumptions to be made in recalculating the EEA amount using United Kingdom tax rules. It is based on paragraph 14 of Schedule 18A to ICTA.

147. *Subsection (1)* determines the start of the accounting period for recalculating the surrendering company's EEA amount.

148. *Subsections (2) to (4)* determine when the accounting period ends. As in [clause 13[j9011] of Bill 5], the accounting period ends at the end of the EEA accounting period or, if earlier, after 12 months.

149. The clause clarifies the position if, exceptionally, the EEA accounting period is longer than two years. Paragraph 14 of Schedule 18A to ICTA does not explicitly cater for this possibility but the only logical interpretation involves treating the process in sub-paragraphs (2) to (4) as iterative. So this clause does not change the law.

Clause 31: Assumptions in relation to capital allowances

150. This clause imports the capital allowances rules for plant and machinery into the recalculation of the surrendering company's EEA amount. It is based in paragraph 15 of Schedule 18A to ICTA.

151. *Subsection (1)* sets out when the clause applies.

152. *Subsection (2)* invokes section 13 of CAA. So the surrendering company is treated as having incurred expenditure on the plant or machinery on the first day of

the EEA accounting period. The amount of the expenditure is the market value of the plant or machinery.

153. *Subsection (3)* ensures that all the relevant rules in the plant and machinery Part of CAA apply in the recalculation of the EEA amount.

Clause 32: Amounts excluded from group relief because of certain arrangements

154. This clause is a rule to deal with contrived situations. It is based on section 403G of ICTA.

155. *Subsection (1)* excludes from the EEA amount any amount that arises from an “arrangement”. The exclusion is mentioned in Step 5 of clause 16. Paragraph (a) of the subsection ensures that the rule does not apply to any part of the EEA amount that is attributable to a United Kingdom permanent establishment. That part is dealt with under the pre-2006 rules (see clause 11).

156. *Subsection (2)* identifies the excluded amount by reference to “arrangements”.

157. *Subsection (3)* tests the purpose of the arrangements. They are within this clause if their main purpose is to secure group relief.

158. *Subsection (4)* defines “arrangements”. The definition is the same as that used in section 8(2B) of TCGA (also introduced by FA 2006). This more modern form of words for the definition is used:

- in clause 60 to rewrite the definition in section 410(5) of ICTA; and
- in clause 72 to rewrite the definitions in paragraphs 5 and 5B of Schedule 18 to ICTA.

Chapter 4: Claims for group relief

Overview

159. This Chapter sets out the conditions for relief involving UK related companies (under Chapter 2) and EEA related companies (under Chapter 3). It also sets out restrictions on relief that may be given on claims.

Clause 33: Overview of Chapter

160. This clause sets out the structure of the Chapter. It is new.

Clause 34: Group relief claims in relation to surrenderable amounts under Chapter 2

161. This clause sets out the basic rules for claims for group relief surrendered by UK related companies. It is based on section 402 of ICTA.

162. The corresponding rules for EEA related companies are in clause 39.

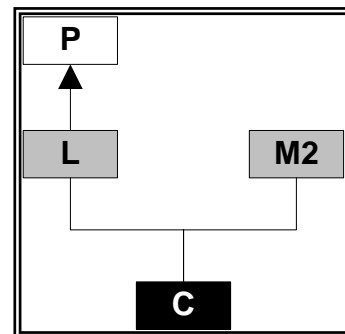
163. *Subsection (2)* requires a claim by the claimant company. The surrender is required by clause 3(7). The subsection goes on to set out three conditions for a claim.

- There must be a consent (see clause 3(7)).
- There must be an overlapping period (see clause 46).
- The relief must be available as a result of the existence of:
 - a group (see clause 35);
 - a consortium, not involving a “link” company (see clause 36); or
 - a consortium involving a “link” company (see clause 37).

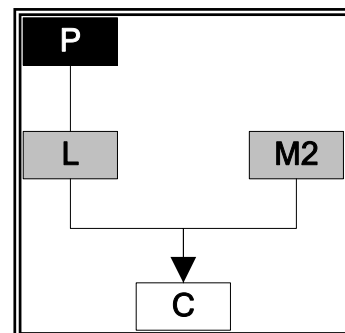
164. The detail of each part of the third condition includes a requirement that the companies concerned are “UK related” (defined in clause 38). That requirement in the case of a group is based on section 402(2) of ICTA.

165. In the case of a consortium it is explicit in section 402(3A) and (3B) of ICTA that the claimant and surrendering companies must be UK related.

166. In the case of a claim for the losses of a company (C) owned by a consortium, section 406(2) of ICTA applies only if the link company (L) could make a claim. That is the case only if L is UK related.



167. In the case of a claim by a company (C) owned by a consortium there is no explicit rule in section 406(5) of ICTA that is equivalent to the rule in section 406(2). But it is implicit in the section: indeed, subsection (8) can work only if the link company (L) is UK related; otherwise section 402(3A) and (3B) of ICTA would prevent L from being the surrendering company.



168. So each of the conditions in clauses 35 to 37 is explicit in requiring that all of the surrendering, claimant and link companies are UK related.

169. *Subsection (3)* makes clear that more than one company may claim the relief available in the surrendering company. But the total claimed cannot exceed the relief available (see clause 41(7)).

Clause 35: The group condition

170. This clause deals with straightforward claims for group relief (that is, claims not involving consortiums) surrendered by a UK related company. It is based on section 402(2) of ICTA.

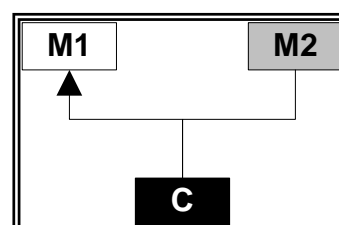
171. The corresponding rule for EEA related companies is in clause 40.

Clause 36: Consortium condition 1

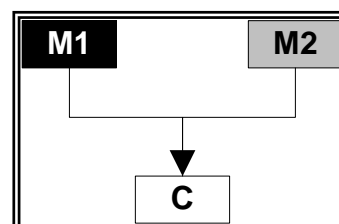
172. This clause allows claims involving companies owned by a consortium. It is based on section 402(3) and (4) of ICTA.

173. *Subsection (1)* allows group relief to go:

- “upwards” from a company owned by a consortium to a member of the consortium; or



- “downwards” from a member of a consortium to a company owned by the consortium.



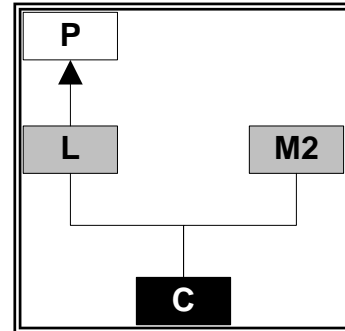
174. *Subsections (2) and (3)* deny relief if the consortium relationship depends on shares that are held by a share-dealing company as part of its circulating capital.

Clause 37: Consortium conditions 2 and 3

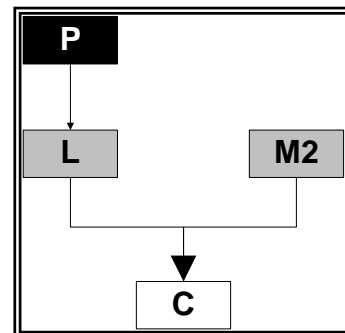
175. This clause extends the relief available to consortiums. It is based on section 406 of ICTA.

176. The extension involves a company (“the link company”) that is a consortium member and is also a member of a group. There are special rules for companies in the same group as the company owned by a consortium in clauses 52 and 53.

177. *Subsection (1)* allows relief to go “upwards” from a company (C) owned by a consortium to a company (P) that is in the same group as the link company (L).



178. *Subsection (2)* allows relief to go “downwards” from a company (P) that is in the same group as the link company (L) to a company (C) owned by the consortium.



179. *Subsections (3) and (4)* deny relief if the consortium relationship depends on shares that are held by a share-dealing company as circulating capital.

180. The rule in subsections (3) and (4) is not explicit in the source legislation. If shares in C are held by L as circulating capital, section 402(4) of ICTA prevents a consortium claim by L. Similarly, C may not claim L’s losses etc. It follows that when P steps into the shoes of L in accordance with section 406(2) or (5) of ICTA P may not claim C’s losses etc and C may not claim P’s losses etc.

Clause 38: Meaning of “UK related” company

181. This clause defines “UK related”. It is based on section 402(2) of ICTA.

Clause 39: Group relief claims for surrenderable amounts under Chapter 3

182. This clause gives the rules for claims for group relief surrendered by EEA related companies. It is based on section 402 of ICTA and paragraph 70 of Schedule 18 to FA 1998.

183. The corresponding rules for UK related companies are in clause 34.

184. *Subsection (2)* requires a claim by the claimant company. The surrender is required by clause 3(7). The subsection goes on to set out three conditions for a claim:

- There must be a consent (see clause 3(7)).
- There must be an overlapping period (see clause 46).

- The relief must be available as a result of the existence of a group (see clause 40).

185. *Subsection (3)* makes clear that more than one company may claim the relief available in the surrendering company. But the total claimed cannot exceed the relief available (see clause 41(7)).

Clause 40: The EEA group condition

186. This clause sets out the conditions for group relief to be surrendered by an EEA related company. It is based on section 402(2A) and (2B) of ICTA.

187. The corresponding conditions for UK related companies are in clause 35.

188. *Subsection (1)* introduces the two conditions.

189. *Subsection (2)* is the condition that the surrendering company is EEA related (that is, it is resident in the EEA or carries on a trade through a permanent establishment there).

190. *Subsection (3)* is the control condition: the surrendering and claimant companies must be under common (75%) control.

Clause 41: Deduction in calculating claimant company's net profits

191. This clause explains how group relief is given to the claimant company. It is based on sections 403 and 407 of ICTA.

192. *Subsection (1)* is the link to the tax calculation clause [not in this print].

193. *Subsection (2)* makes clear that the claimant company may claim all or part of the surrendering company's surrenderable amounts.

194. *Subsection (3)* is a signpost to the restrictions later in the Chapter. Paragraph (e) refers to one of the restrictions in section 403(4) of ICTA. The other restrictions in that subsection are referred to in clauses 3(5) and 9(7) or are rewritten in clause 13.

195. *Subsection (4)* is the rule that group relief is the final deduction to be given in arriving at a company's taxable profits, subject only to the exceptions set out in subsection (5).

196. *Subsection (5)* sets out the reliefs that are to be given *after* group relief. So, for instance, group relief may reduce a company's profits for an accounting period to an extent that there is a restriction to relief for losses carried back to that accounting period.

197. *Subsection (6)* makes clear that each relief in subsection (4) that depends on the making of a claim is to be taken account of on the assumption that the relevant claim is made. But there is an exception in the case of relief for non-trading loan relationship deficits: that relief is taken account of only if the relevant claim is actually made.

198. *Subsection (7)* ensures that an amount of relief is not given twice. It is based on section 411(1) of ICTA. This Bill follows the source legislation in setting out the rule only once. It may be relevant to a claim under, for instance, a loss relief clause [not in this print]. But we think that there is no need to repeat the rule in that clause.

Clause 42: Limitation on amount of group relief applying to all claims

199. This clause restricts the amount of group relief to the profits available to absorb it. It is based on section 403A(1) of ICTA.

200. It compares the “usable part of the surrenderable amounts” (defined in clause 43) with the “usable part of the claimant company’s total profits” (defined in clause 44). The amount of group relief is restricted to the lower of the two compared amounts.

Clause 43: Usable part of the surrenderable amounts

201. This clause defines “usable part of the surrenderable amounts” for the purpose of clause 42. It is based on section 403A(2) to (4) of ICTA.

202. *Subsection (1)* introduces the rules for calculating the “usable part of the surrenderable amounts”. In particular, the rules cater for the cases where:

- the surrendering company and the claimant company have different accounting periods; or
- there are multiple claims for the surrendering company’s losses etc.

203. *Subsection (2)* sets out the restriction to be made if the surrendering company and claimant company have different accounting periods. In that case the “surrender period” (see clause 3(1)) and “claim period” (see clause 34(2)) are not the same. The loss etc is apportioned on a time basis to the “overlapping period” (see clause 46).

204. *Subsection (3)* introduces the calculation that has to be made if there are multiple claims for the surrendering company’s loss etc. It considers what “relevant prior claims” have been made.

205. *Subsection (4)* defines a “relevant prior claim”.

206. *Subsection (5)* is a method statement for calculating the total amount of any “relevant prior claims”. The overlapping period for any relevant prior claim is given by clause 46.

207. If no part of that overlapping period falls within the claim period of the current claim, that relevant prior claim is ignored. But if part of the overlapping period does fall within the claim period of the current claim a time-apportioned amount of the prior claim is taken into account.

208. The total of the amounts to be taken into account for relevant prior claims is deducted to arrive at the usable amount of the surrenderable amounts.

Clause 44: Usable part of claimant company's total profits of the claim period

209. This clause defines "usable part of the claimant company's total profits" for the purpose of clause 42. It is based on section 403A(2), (3) and (5) and section 403D(2) of ICTA.

210. *Subsection (1)* introduces the rules for calculating the "usable part of the claimant company's total profits". In particular, the rules cater for the cases where:

- the surrendering company and the claimant company have different accounting periods; or
- there are other claims by the claimant company for the claim period.

211. *Subsection (2)* sets out the restriction to be made if the surrendering company and claimant company have different accounting periods. In that case the "surrender period" (see clause 3(1)) and "claim period" (see clause 34(2)) are not the same. The claimant company's total profits are apportioned on a time basis to the "overlapping period" (see clause 46).

212. *Subsection (3)* introduces the calculation that has to be made if there are other claims by the claimant company for the claim period. It considers what "relevant prior claims" have been made.

213. *Subsection (4)* defines a "relevant prior claim".

214. *Subsection (5)* is a method statement for calculating the total amount of any "relevant prior claims". The overlapping period for any relevant prior claim is given by clause 46.

215. If no part of that overlapping period falls within the claim period of the current claim, that relevant prior claim is ignored. But if part of the overlapping period does fall within the claim period of the current claim a time-apportioned amount of the prior claim is taken into account.

216. The total of the amounts to be taken into account for relevant prior claims is deducted to arrive at the usable amount of the claimant company's total profits.

Corporation tax: Bill 6
Group relief
October 2007: Committee paper CC/SC (07) 27

217. *Subsection (6)* explains what is meant by “total profits” in subsection (1). They are defined in the tax calculation clause [not in this print] to include only amounts charged to corporation tax. So there is no need to exclude non-chargeable profits and section 403D(2)(a) of ICTA is not rewritten in this clause.

218. Section 403A(2)(b) of ICTA refers to “total profits ... reduced by ... previously claimed group relief”. Such group relief can have been given only against profits “as reduced by any other relief” (section 407(1)(b) of ICTA). So subsection (6)(a) and (b)(ii) of this clause makes clear that the total profits must be reduced by such other relief before being further reduced by group relief.

219. In the case of a claimant company that is not resident in the United Kingdom the usable amount of its total profits does not include any profits that are “double taxation exempt” (see clause 86).

Clause 45: Supplementary provision for the purposes of sections 43 and 44

220. This clause sets out three rules about relevant prior claims. It is based on section 403A(6) and (7) of ICTA.

221. *Subsection (1)* explains what happens if two or more claims are made at the same time. They are treated as made in whatever order the company or companies choose, by making an election.

222. The clause does not specify that the election is to be made “by notice to any officer of the Board” (section 403A(7)(a) of ICTA). A definitions clause [not in this print] draws attention to the rules in Schedule 18 to FA 1998, which apply for the purposes of this Act. Either the election is to be made in a company’s return or it is to be made to “an officer of the Board” (paragraph 2(1) of Schedule 1A to TMA, applied by paragraph 59 of Schedule 18 to FA 1998).

223. If no such election is made, the choice is made by HMRC.

224. *Subsection (2)* introduces the second rule, about measuring a relevant prior claim. The amount of such a claim is determined when it is made. So it takes account of any earlier claims; and takes no account of any later claims.

225. The clause does not rewrite the rule in section 403A(6) of ICTA about a claim becoming final. See *Change 1* in Annex 1.

<p>Q1. We propose not to specify that the amount of a prior claim for group relief is determined when the claim becomes final. We welcome comments on this proposed rewrite change.</p>
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226. *Subsections (3) and (4)* set out the third rule. It substitutes a “just and reasonable” apportionment for any time-apportionment prescribed by clause 43 or 44.

Clause 46: Meaning of “the overlapping period”

227. This clause defines “the overlapping period” for Chapter 4 of this Part of the Bill. It is based on section 403A of ICTA. The expression as defined in this clause is used in clauses 43, 44, 47, 48, 50 and 71.

228. *Subsection (1)* is the basic rule. The overlapping period is the period that is common to:

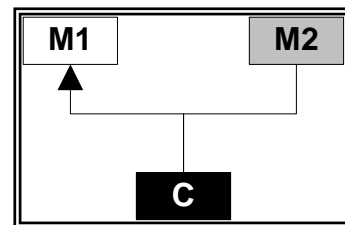
- the surrender period (of the surrendering company – defined in clause 3(1)); and
- the claim period (of the claimant company – defined in clause 34(2)).

229. *Subsection (2)* excludes from the overlapping period any part of it during which the conditions for relief are not satisfied.

230. *Subsection (3)* sets out the conditions for relief that have to be satisfied during the overlapping period. Only one of the conditions will be relevant to any claim. They are the conditions set out in clauses 35 to 37 (for UK related companies) and 40 (for EEA related companies).

Clause 47: Consortium condition 1: limitation if surrendering company owned by consortium

231. This clause is the basic rule about relief surrendered by a company to a member of the consortium that owns it. It is based on section 403C of ICTA.



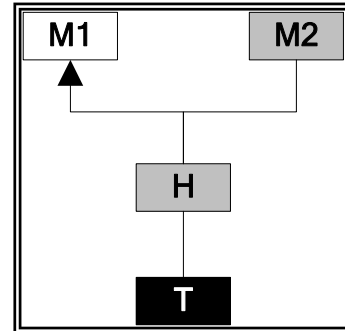
232. *Subsection (1)* ties the clause to consortium condition 1: that is, a case that does not involve a link company. Cases involving link companies are dealt with in clauses 49 and 50.

233. *Subsection (2)* restricts the relief by reference to the consortium member’s interest in the surrendering company.

234. *Subsection (3)* sets out what that interest is. Usually it is the proportion represented by the consortium member’s shareholding in the surrendering company. But if that shareholding entitles the consortium member to a lower proportion of the surrendering company’s profits or assets the lower proportion is used.

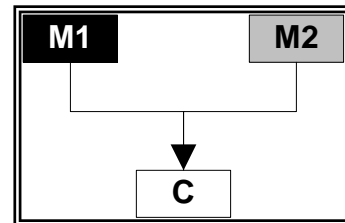
235. *Subsection (4)* deals with the case where the consortium member’s interest in the surrendering company varies in the overlapping period (see clause 46). In that case an average is taken.

236. *Subsection (5)* deals with the case where a trading company (T) is indirectly owned by a consortium through a holding company (H) (see clause 57). In that case the various proportions referred to in the clause are calculated by reference to the consortium member's (M1's) interest in H.



Clause 48: Consortium condition 1: limitation if claimant company owned by consortium

237. This clause is the basic rule about relief surrendered by a member of a consortium to a company that is owned by the consortium. It is based on section 403C of ICTA.



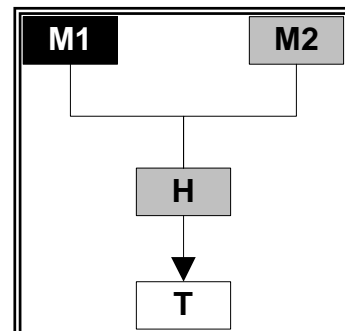
238. *Subsection (1)* ties the clause to consortium condition 1: that is, a case that does not involve a link company. Cases involving link companies are dealt with in clauses 49 and 50.

239. *Subsection (2)* restricts the relief by reference to the consortium member's interest in the claimant company.

240. *Subsection (3)* sets out what that interest is. Usually it is the proportion represented by the consortium member's shareholding in the claimant company. But if that shareholding entitles the consortium member to a lower proportion of the surrendering company's profits or assets the lower proportion is used.

241. *Subsection (4)* deals with the case where the consortium member's interest in the claimant company varies in the overlapping period (see clause 46). In that case an average is taken.

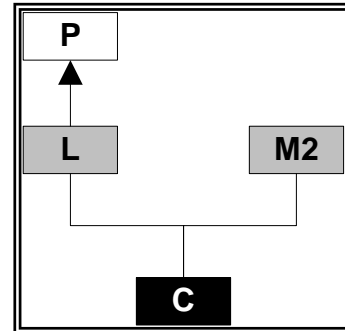
242. *Subsection (5)* deals with the case where a trading company (T) is indirectly owned by a consortium through a holding company (H) (see clause 57). In that case the various proportions referred to in the clause are calculated by reference to the consortium member's (M1's) interest in H.



Clause 49: Consortium conditions 2 and 3: limitations in sections 47 and 48 to apply

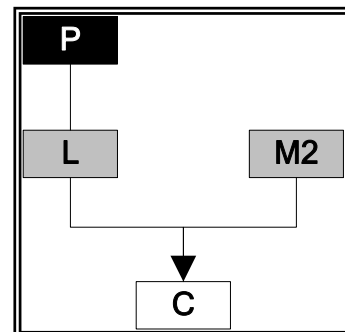
243. This clause is the basic rule about relief involving a link company (see clause 37). It is based on section 406 of ICTA.

244. *Subsection (2)* deals with a claim by a company that is a member of the same group as the link company for relief from a company owned by the consortium.



245. The overlapping period for the claim is still determined by reference to the accounting periods of the actual claimant company (P) and the surrendering company (C). But the subsection treats the link company (L) as if it were the claimant company for the purpose of clause 47(3). So the “applicable proportion” of the surrenderable amounts is based on L’s interest in C in the overlapping period (if necessary, based on an average of that period – see clause 47(4)(b)).

246. *Subsection (3)* deals with a claim by a company owned by a consortium for relief from a company that is a member of the same group as the link company.

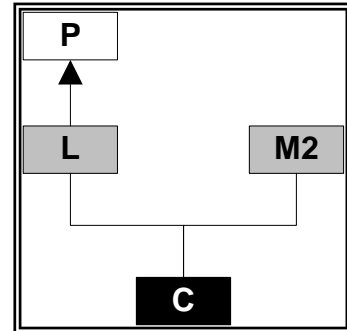


247. The overlapping period for the claim is still determined by reference to the accounting periods of the claimant company (C) and the actual surrendering company (P). But the subsection treats the link company (L) as if it were the surrendering company for the purpose of clause 48(3). So the “applicable proportion” of C’s profits is based on L’s interest in C in the overlapping period (if necessary, based on an average of that period – see clause 47(4)(b)).

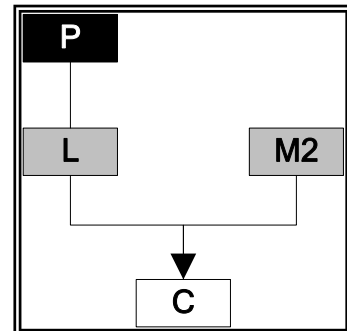
Clause 50: Consortium conditions 2 and 3: overall limitation on relief for claims made by companies in the link company’s group

248. This clause restricts the amount of relief that can be claimed in cases involving link companies. It is based on section 406 of ICTA.

249. *Subsections (1) to (3)* deal with the case of the surrender of relief by a company owned by a consortium. The link company's group, as a whole, cannot claim more relief than would have been available to the link company alone.



250. *Subsections (4) to (6)* deal with the case of the surrender of relief by the link company and members of its group to a company owned by the consortium. The claimant company cannot claim relief in an amount greater than its profits that would be available to absorb relief surrendered by the link company alone.



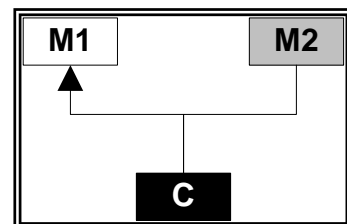
251. *Subsection (7)* explains how to operate the restriction in subsection (6) if the link company and claimant company have different accounting periods. The tests in clause 48 are applied in the claimant company's accounting period.

252. *Subsection (8)* supplies definitions for the clause.

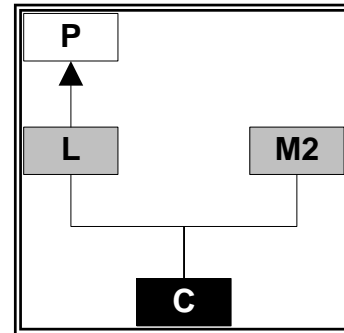
Clause 51: Consortium conditions 1 and 2: limitation on relief if surrenderable amounts include trading loss

253. This clause restricts the amount of trading losses that can be surrendered by a company owned by a consortium. It is based on section 403ZA of ICTA.

254. *Subsection (1)* applies the clause to consortium condition 1: that is, a case that does not involve a link company.



255. *Subsection (2)* extends the clause to consortium condition 2: that is, cases involving a link company (L) where the surrendering company (C) is owned by a consortium.



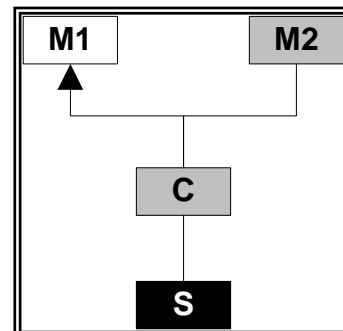
256. *Subsection (3)* is the rule that a trading loss within the “sideways relief” clause [not in this print] is not available for group relief to the extent that relief could be given for it within the surrendering company.

257. *Subsection (4)* explains how the rule in this clause interacts with the rule in clause 52: this clause applies first to reduce the surrenderable losses.

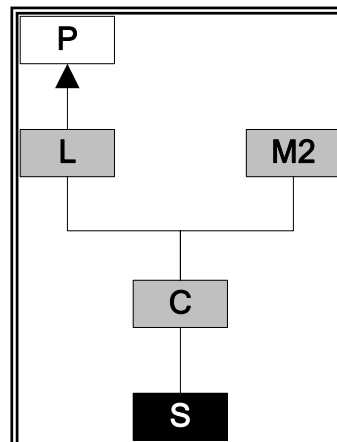
Clause 52: Consortium conditions 1 and 2: limitation on relief if surrendering company is in a group of companies

258. This clause treats the company owned by a consortium and any companies in its group as a single company for the purposes of surrenders by companies in the group. It is based on section 405 of ICTA. The rule about companies in the same group as the consortium member is in clause 50.

259. *Subsection (1)* applies the clause to consortium condition 1: that is, a case that does not involve a link company.



260. *Subsection (2)* extends the clause to consortium condition 2: that is, cases involving a link company (L) where the surrendering company (S) is owned by a consortium (or is a member of the same group as the company owned by the consortium).



261. *Subsections (3) and (4)* restrict the relief available to any excess of the surrenderable amounts over the “group’s potential relief”.

262. *Subsection (5)* is a method statement setting out how to calculate the “group’s potential relief”. This is the amount of profits that could be covered by all the available losses etc within the group. As clause 51(3) makes clear, within the individual companies in the group, trading losses are treated as set off first against other profits.

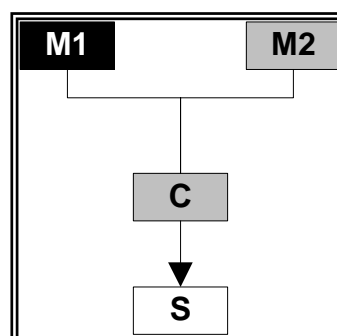
263. If the profit-making “company in question” has an accounting date different from that of the surrendering company, step 3 of the method statement allows an apportionment of its profits to arrive at its contribution to the “group’s potential relief”. See *Change 2* in Annex 1.

Q2. We propose to allow the restriction in this clause to be made by reference to the profits of the overlapping period. We welcome comments on this proposed rewrite change.

264. *Subsection (6)* clarifies the basis on which the group relief claims are assumed to be made within the group.

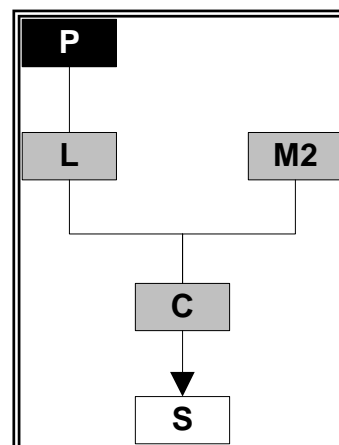
Clause 53: Consortium conditions 1 and 3: limitation on relief if claimant company is in a group of companies

265. This clause treats the company (C) owned by a consortium and any companies (S etc) in its group as a single company for the purposes of claims by companies in the group. It is based on section 405 of ICTA. The rule about companies in the same group as the consortium member is in clause 50.



266. *Subsection (1)* applies the clause to consortium condition 1: that is, a case that does not involve a link company.

267. *Subsection (2)* extends the clause to consortium condition 3: that is, cases involving a link company (L) where the claimant company (S) is owned by a consortium (or is a member of the same group as the company owned by the consortium).



268. *Subsections (3) and (4)* restrict the relief available to the amount that remains after relief is notionally given by way of group relief for all the available losses etc within the group. But those available losses etc may already have been reduced by actual claims within the group.

269. *Subsection (5)* clarifies the basis on which the group relief claims are treated as already made within the group.

Chapter 5: Subsidiaries, groups and consortiums

Overview

270. This Chapter sets out the rules for determining the relationships between companies for the purpose of group relief.

Clause 54: Overview of Chapter etc

271. This clause introduces the Chapter. *Subsection (3)* is based on section 413(3) of ICTA.

Clause 55: Meaning of “75% subsidiary” and “90% subsidiary”

272. This clause explains what is meant by “75% subsidiary” and “90% subsidiary”. It is based on section 413 of ICTA.

273. *Subsection (1)* imports the definitions in section 838 of ICTA. A body corporate is a “75% subsidiary” of another body corporate:

... if and so long as not less than 75 per cent of its ordinary share capital is owned directly or indirectly by that other body corporate ...

274. The definition of “90% subsidiary” is in similar terms. Section 838 of ICTA goes on to deal with indirect shareholdings.

275. *Subsection (2)* includes the share capital of an industrial or provident society in “ordinary share capital”.

276. *Subsections (3) and (4)* exclude shares held as circulating capital by a company that deals in shares.

277. The clause simplifies the rule in section 413(5) of ICTA by not dealing separately with indirect share holdings. If any of the companies in the ownership chain holds the relevant shares as circulating capital the chain is broken for the purposes of this clause.

278. *Subsections (5) and (6)* introduce the additional tests for a company to be treated as a 75% subsidiary of another. They are that “equity holders” in the subsidiary must be beneficially entitled to:

- at least 75% of the subsidiary’s profits; and
- at least 75% of the subsidiary’s assets in a winding up.

279. The test for a “90% subsidiary” is in similar terms.

280. The detail of the rules about equity holders is set out in Chapter 6 of this Part of the Bill.

Clause 56: Groups of companies

281. This clause sets out the conditions for companies to be treated as members of the same group. It is based on section 413(3) of ICTA.

282. In regulation 17 of the Taxation of Securitisation Companies Regulations 2006 (SI 2006/3296) there is a rule that a securitisation company (defined in regulation 4) is not to be treated as a member of a group or consortium. The regulations continue to apply for the purposes of this Part of this Bill as they apply for the purposes of Chapter 4 of Part 10 of ICTA.

283. Similar regulations, relating to property securitisation companies and insurance securitisation companies, were recently published as drafts for consultation.

Clause 57: Companies owned by consortiums and members of consortiums

284. This clause sets out the conditions for a company to be “owned by a consortium”. It is based on sections 402(3) and 413(6) and (7) of ICTA.

285. *Subsection (1)* sets out the three basic conditions.

286. The first condition (that the company must be a trading or holding company) is a change of approach from ICTA. Section 413(6) and (7) of ICTA set out which companies are “owned by a consortium”. Section 402(3) includes such companies in the group relief rules, but only if they are trading companies (or the holding company of trading companies).

287. So, in the source legislation, a non-trading company may be owned by a consortium. But it cannot surrender or claim group relief. In this Bill such a company is not owned by a consortium for the purposes of this Part. The result is the same: it cannot surrender or claim group relief.

288. *Subsection (2)* extends the relief available to consortiums. The extension involves trading companies in the same group as a holding company owned by a consortium. The corresponding extension to companies in the same group as a consortium member is in clause 37(1) and (2).

289. *Subsection (3)* defines “holding company” so that such a company must have trading subsidiaries.

Clause 58: Arrangements for transfer of member of group of companies etc

290. This clause counteracts arrangements designed to obtain group relief. It is based on section 410 of ICTA.

291. It is possible to arrange for a loss-making company in a group to become temporarily a member of a second group while the economic reality is that it remains a member of the first group. The clause operates as soon as arrangements are made for the ownership of the company to change.

292. *Subsection (1)* applies the clause potentially to any case involving two companies in a group.

293. *Subsection (2)* denies group relief (by treating the companies as not members of the same group) if “arrangements” are in place.

294. *Subsection (3)* sets out the three “effects” which bring arrangements within the clause. They all involve a change in the control of one of the companies or of a trade that it carries on.

Clause 59: Arrangements for transfer of company owned by consortium etc

295. This clause counteracts arrangements designed to obtain consortium relief. It is based on section 410 of ICTA.

296. It is possible to arrange for a loss-making company to become temporarily:

- a member of a consortium; or
- owned by a consortium

while the economic reality is that it is neither of these things. The clause operates as soon as arrangements are made for the ownership of the company to change.

297. *Subsection (1)* applies the clause potentially to any case involving a trading company and a consortium.

298. *Subsection (2)* denies group relief (by treating the trading company as not owned by a consortium) if “arrangements” are in place.

299. *Subsection (3)* sets out the four “effects” which bring arrangements within the clause. They all involve a change in the control of the trading company or of a trade that it carries on.

300. *Subsection (5)* extends the operation of the clause to cases where the trading company is owned indirectly by a consortium.

Clause 60: Supplementary provision for the purposes of sections 58 and 59

301. This clause explains some of the terms used in the two previous clauses. It is based on section 410 of ICTA.

302. The definition of “arrangements” (“arrangements means arrangements ...”) in section 410(5) of ICTA is not particularly clear. But it is clear that it is intended to cover the sort of agreement, understanding etc referred to in section 403G of ICTA (inserted by FA 2006). So this clause takes the more modern definition of “arrangements” from section 403G of ICTA. The same definition is used in clauses 32 and 72.

Chapter 6: Equity holders and profits and assets available for distribution

Overview

303. This Chapter sets out how the rights of equity holders are determined in this Part. These rights (to profits and assets of a company) are used as alternatives to simple shareholding for determining interests in a company:

- in determining the proportion of a company’s loss etc that can be surrendered to a member of a consortium that owns the company (clause 47(3));
- in determining the proportion of a company’s profits that can be used to absorb losses etc surrendered by a member of a consortium that owns the company (clause 48(3)); and
- in the tests as to whether or not a company is a 75% subsidiary (or a 90% subsidiary) of another (clause 55(6)).

Clause 61: Overview of Chapter etc

304. This clause sets out the structure of the Chapter. Subsection (5) is based on Schedule 18 to ICTA.

Clause 62: Meaning of “equity holder”

305. This clause defines “equity holder”. It is based on paragraph 1 of Schedule 18 to ICTA.

306. *Subsection (1)* establishes that an equity holder may be:

- a shareholder (but only in relation to “ordinary shares” – see clause 64); or
- a loan creditor (but only in relation to loans that are not “normal commercial loans” – see clause 65).

307. *Subsection (2)* applies section 417 of ICTA to determine whether a person is a loan creditor of a company. The exclusion of section 417(9) for the purpose of this clause means that a loan made by a bank in the ordinary course of its business may make the bank a loan creditor. But if the loan is a “normal commercial loan” (see clause 65), the loan will be excluded anyway. We propose to rewrite section 417 of ICTA in Bill 6. So subsection (2) of this clause will be refined in due course.

Clause 63: Use of relevant company’s assets

308. This clause extends the meaning of “equity holder”. It is based on paragraph 1(6) of Schedule 18 to ICTA.

309. The clause treats as an equity holder a person who provides money to a company so that it can acquire an asset which is used in a trade by the person who provided the money. The company claims capital allowances on the asset.

310. In this case the person who provides the money has an economic stake in the company, whose results depend on the profits of the trade in which the asset is used. And this is the case even if the money is provided by way of, say, fixed-rate preference shares which would not otherwise count towards the investor’s stake in the company (see clause 64).

311. *Subsection (1)* sets the scene, specifying the conditions to be met for the clause to apply.

312. *Subsection (2)* sets out the capital allowances to which the company must be entitled if the clause is to apply.

313. *Subsection (3)* is the main rule: the person who provides the money is treated an equity holder.

314. *Subsections (4)* and *(5)* exclude banks from the application of the clause. The exclusion applies to normal commercial loans made in the course of a banking business.

Clause 64: Meaning of “ordinary shares”

315. This clause defines “ordinary shares” by excluding fixed-rate preference shares from the holdings that are to be considered for the purposes of this Chapter. It is based on paragraph 1(2) and (3) of Schedule 18 to ICTA.

316. *Subsection (1)* introduces the five conditions that have to be met if the shares are to be excluded as fixed-rate preference shares.

317. *Subsection (2)* is the first condition. There must be new consideration. “New consideration” is defined in clause 61(5) by reference to section 254 of ICTA. It is:

consideration not provided directly or indirectly out of the assets of the company, and in particular does not include amounts retained by the company by way of capitalising a distribution

That definition is subject to section 254(5) and (6) of ICTA, which deal with shares issued at a premium and value derived from shares.

318. *Subsections (3) to (6)* set out the other conditions.

Clause 65: Meaning of “normal commercial loan”

319. This clause defines normal commercial loans so that they can be excluded from the loans that are to be considered for the purposes of this Chapter. It is based on paragraph 1(5) of Schedule 18 to ICTA.

320. *Subsection (1)* requires that the loan includes new consideration. “New consideration” is defined in clause 61(5) by reference to section 254 of ICTA. It is:

consideration not provided directly or indirectly out of the assets of the company, and in particular does not include amounts retained by the company by way of capitalising a distribution

That definition is subject to section 254(5) and (6) of ICTA, which deal with shares issued at a premium and value derived from shares.

321. The subsection also introduces the four further conditions for a loan to be excluded. The details of the conditions are in subsections (2) to (5).

Clause 66: Normal commercial loans: interest depending on company’s results or value of assets

322. This clause explains some of the concepts used in clause 65. It is based on paragraph 1(5E) to (5I) of Schedule 18 to ICTA.

323. *Subsection (1)* allows a “fixed” rate of interest to include a rate that depends inversely on the company’s results. Interest at a rate that increases when the company’s results improve is like a dividend. But there is no need to treat interest as a dividend if its rate reduces when the company’s results improve.

324. *Subsection (2)* allows a “fixed” rate of interest to include a rate that depends inversely on the value of the company’s assets. Interest at a rate that increases when the company’s assets increase in value is like a dividend. But there is no need to treat interest as a dividend if its rate reduces when the company’s assets decrease in value.

325. *Subsections (3) to (6)* make clear that a loan is not treated as depending on the value of any of the company’s assets (see clause 65(4)(b)) simply because it is secured by a charge over land acquired with the loan.

Clause 67: Supplementary provision for the purposes of sections 64 and 65

326. This clause explains how the “quoted parent company” test is applied. It is based on paragraph 1(5A) to (5D) of Schedule 18 to ICTA.

327. In accordance with clause 62 a holder of fixed rate preference shares does not count as an equity holder. Such shares may carry the right to conversion into shares or securities in the company’s “quoted parent company” (see clause 64(3)(c)). In order to establish whether the company (S) is a 75% subsidiary of the possible quoted parent company (P) it may be necessary to know whether P is an equity holder in S (see clause 55(6)). So the process becomes circular.

328. A similar circularity can result from consideration of whether a loan is a normal commercial loan. The loan may carry the right to conversion into shares or securities in the company’s “quoted parent company” (see clause 65(2)(c)). Again, it is necessary to establish whether the company is a 75% subsidiary of the possible quoted parent company.

329. *Subsection (1)* deals with shares. It applies if all the conditions in clause 64 are met, apart from the one (B) which may depend on conversion to shares or securities in a quoted parent company.

330. *Subsection (2)* deals with securities. It applies if all the conditions in clause 65 are met, apart from the one (A) which may depend on conversion to shares or securities in a quoted parent company.

331. *Subsection (3)* sets out the main condition for a company having a quoted parent company: it must be a 75% subsidiary; and the parent’s shares must be quoted on a stock exchange.

332. *Subsection (4)* sets the scope of the rule which breaks the circularity. It applies only for the purposes of clauses 64 and 65 and this clause.

333. *Subsection (5)* is the rule which breaks the circularity: the possible quoted parent company is assumed to be a quoted parent company.

Clause 68: Proportion of profits available for distribution to which company is entitled

334. This clause sets out how to apply the tests in this Part of the Bill that are based on an entitlement to a distribution of profits. It is based on paragraph 2 of Schedule 18 to ICTA.

335. The tests in this Part of the Bill based on an entitlement to a distribution of profits are in clauses 47(3)(b), 48(3)(b) and 55(6)(a). The tests are also applied, by cross-reference, in the rules about small companies' relief [not in this print].

336. *Subsection (1)* sets the scope of the section and introduces company A (the parent) and company B (the subsidiary).

337. *Subsection (2)* is the basic rule: the proportion of the profits to which company A is entitled is based on what it would get if all company B's profits were distributed to its equity holders. The test applies in relation to company B's accounting period into which the "relevant time" falls (see clause 71(1)). If there are no profits in that accounting period a notional profit of £100 is assumed.

338. *Subsection (3)* clarifies the position in the case where some of company B's profits are in fact distributed. The clause is still concerned with the whole of its profits.

339. *Subsection (4)* requires that company B's profits are calculated in accordance with United Kingdom tax rules, wherever it is resident.

340. *Subsection (5)* makes clear that the clause is not concerned with any payments which are repayments of capital.

341. *Subsection (6)* includes in company A's entitlement any payment which it gets as an equity holder even if the payment would not otherwise count as a distribution.

Clause 69: Proportion of assets available for distribution to which company is entitled

342. This clause sets out how to apply the tests in this Part of the Bill that are based on an entitlement to a distribution of assets in a winding up. It is based on paragraph 3 of Schedule 18 to ICTA.

343. The tests in this Part of the Bill based on an entitlement to a distribution of assets in a winding up are in clauses 47(3)(c), 48(3)(c) and 55(6)(b). The tests are also applied, by cross-reference, in the rules about small companies' relief [not in this print].

344. *Subsection (1)* sets the scope of the section and introduces company A (the parent) and company B (the subsidiary).

345. *Subsection (2)* is the basic rule: the proportion of the assets to which company A is entitled is based on what it would get if company B's net assets were distributed to its equity holders in a winding up. The test applies to a notional winding up at the end of company B's accounting period into which the "relevant time" falls (see clause 71(1)). If there are no net assets (or if there is no balance sheet) at the end of that accounting period net assets of a notional amount of £100 are assumed.

346. *Subsection (3)* identifies the gross assets of company B, from which its liabilities are deducted to arrive at its net assets.

347. *Subsection (4)* identifies the liabilities of company B, which are deducted from its gross assets to arrive at its net assets.

348. *Subsection (5)* includes in company A's entitlement any payment which it would get as an equity holder even if the payment would not otherwise count as a distribution of assets.

349. *Subsections (6) to (8)* make clear that the clause is not concerned with any payments that are repayments of capital. This exclusion affects the calculations of both company B's gross assets and the amount to which the equity holder is entitled.

Clause 70: Profit and assets available for distribution and company's entitlement: supplementary

350. This clause includes three special rules for calculating an equity holder's entitlements for the purposes of sections 47(3) and 48(3) and 55(6). It is based on Schedule 18 to ICTA.

Clause 71: Meaning of "relevant time" and "relevant accounting period"

351. This clause defines some expressions. It is based on paragraph 7 of Schedule 18 to ICTA.

352. The "relevant time" and the "relevant accounting period" are used for the calculation of a company's entitlement to profits or assets. Such a calculation is used to determine whether or not a company:

- is a member of a group; or
- is owned by a consortium.

353. *Subsections (3) and (4)* explain how to make the calculations in the cases of non-UK resident companies.

Clause 72: Application of sections 73 to 85 etc

354. This clause introduces a group of clauses that deal with shares and securities that have restricted or temporary rights. Subsection (2) is based on paragraphs 4, 5 and 5F of Schedule 18 to ICTA.

355. The definitions of “arrangements” (“arrangements [means/are] arrangements ...”) in paragraphs 5(3)(b) and 5B(1) of Schedule 18 to ICTA are not particularly clear. But it is clear that they are intended to cover the sort of agreement, understanding etc referred to in section 403G of ICTA (inserted by FA 2006). So this clause takes the more modern definition of “arrangements” from section 403G of ICTA. The same definition is used in clauses 32 and 60.

Clause 73: Shares or securities with limited rights

356. This clause require an alternative calculation if an equity holder’s rights (either to profits or to assets in a winding up) are restricted. It is based on paragraph 4 of Schedule 18 to ICTA.

357. *Subsection (1)* introduces the clause. As in the basic rules in clauses 68 and 69 the calculation is made at the “relevant time” (see clause 71).

358. *Subsection (2)* requires a calculation of the “alternative proportion” on the assumption that all the restricted rights are waived. If those rights belong to the company in question, its proportion is reduced. But if the rights belong to other equity holders its proportion is increased.

359. *Subsection (3)* substitutes the alternative proportion for the proportion worked out using the basic rules, but only if the alternative proportion is smaller.

360. *Subsection (4)* makes clear that any sort of restriction of the rights of an equity holder is to be taken into account for the purposes of the clause.

361. *Subsection (5)* draws attention to the fact that restrictions based on profits or assets referable to a trade carried on in the United Kingdom by a non-resident company are dealt with in clauses 82 to 85 and not in this clause.

Clause 74: Shares or securities with temporary rights

362. This clause and clause 75 require an alternative calculation if an equity holder’s rights (either to profits or to assets in a winding up) are capable of changing. Both clauses are based on paragraph 5 of Schedule 18 to ICTA.

363. *Subsection (1)* sets the scope of the clause. If it applies, the consequences are set out in clause 75. As in the basic rules in clauses 68 and 69 the calculation is made at the “relevant time” (see clause 71).

Clause 75: Determining company A’s proportion if there are shares etc with temporary rights

364. This clause and clause 74 require an alternative calculation if an equity holder’s rights (either to profits or to assets in a winding up) are capable of changing. Both clauses are based on paragraph 5 of Schedule 18 to ICTA.

365. *Subsection (1)* takes up the story from the previous clause, which determines whether or not this clause applies. To arrive at the “alternative proportion” one must assume that the rights of the equity holders are now what they will be at a “future time” when the rights become different (see clause 74(2) and (3)).

366. *Subsection (2)* explains “relevant future time”.

367. *Subsection (3)* is the rule that the alternative proportion is used if it is lower than the proportion that would otherwise be used.

Clause 76: Cases in which option arrangements are in place

368. This clause defines “option arrangement” for the purpose of clause 77. It is based on paragraph 5B of Schedule 18 to ICTA.

369. *Subsection (1)* is a cross-reference to clause 77, which sets out the consequences of option arrangements.

370. *Subsection (2)* introduces the two conditions that have to be satisfied if an arrangement is to be an option arrangement.

371. *Subsection (3)* is the condition that the arrangement changes the equity holder’s entitlement. The subsection refers (twice) to beneficial entitlement but paragraph 5B(2) of Schedule 18 to ICTA refers only to entitlement. This is not a change in the law because the option arrangements are relevant only if they are used for a “determination” to be made under paragraph 5B(7) of the Schedule. The determination is made in accordance with paragraph 2(1) or 3(1) of the Schedule. Those sub-paragraphs make clear that the Schedule is concerned only with beneficial entitlements.

372. *Subsection (4)* is the condition that the option may lead to a person acquiring shares or securities. Shares must be ordinary shares (defined in clause 64). The option may be a “call” option, which gives a person the right to acquire the shares or securities; or a “put” option, which gives a person the right to require another person to acquire shares or securities.

373. *Subsection (5)* excludes rights that arise from an SAYE option scheme or that are to acquire normal commercial loans. Rights to acquire fixed-rate preference shares are excluded by the reference to “ordinary shares” in subsection (4).

374. *Subsections (6) to (8)* set out the excluded rights under an SAYE option scheme.

Clause 77: Determining company A’s proportion if option arrangements in place

375. This clause requires an alternative calculation if an equity holder’s rights (either to profits or to assets in a winding up) are affected by option arrangements. It is based on paragraph 5B of Schedule 18 to ICTA.

376. There is a distinction between:

- an option which affects the rights carried by shares or securities; and
- an option which leads to the acquisition of shares or securities.

377. In the first case, such an option would fall within clause 74. This clause deals with the second case, which was considered in *J Sainsbury plc v O'Connor* (1991), 64 TC 208 CA¹.

378. *Subsection (1)* is a link to clause 76 and provides a method statement. It requires a calculation for every permutation of rights that may exist if options are exercised so that shares or securities in the company are acquired. The permutation that gives the lowest proportion is the “alternative proportion”.

379. *Subsection (2)* is the rule that the alternative proportion is used if it is lower than the proportion that would otherwise be used.

Clauses 78 to 81

380. The first step in a calculation of an equity holder’s proportion of profits available for distribution is based on the equity holder’s share holding (see clause 68). The equivalent first step in the calculation of an equity holder’s proportion of assets available for distribution in a winding up is in clause 69.

381. The next step is to check whether there is a (lower) alternative proportion in accordance with the three special rules in:

- clause 73 (limited rights);
- clause 75 (temporary rights); or
- clause 77 (options).

382. If only one of the special rules applies the lower alternative proportion is used. But clauses 78 to 81 explain what happens if two or three of the special rules apply in the same case.

383. If two rules apply, there are four possible proportions:

- calculated under the basic rule in clause 68 or 69;

¹ [1991] STC 318

- calculated under one of the special rules;
- calculated under the other of the special rules; or
- calculated under both rules together.

384. If all three rules apply, there are eight possible proportions.

385. In all cases, the lowest proportion is used.

Clause 78: Cases in which both sections 73 and 75 apply

386. This clause deals with the first and second special rules (see paragraph 381). It is based on paragraph 5A of Schedule 18 to ICTA.

Clause 79: Cases in which both sections 73 and 77 apply

387. This clause deals with the first and third special rules (see paragraph 381). It is based on paragraph 5C of Schedule 18 to ICTA.

Clause 80: Cases in which both sections 75 and 77 apply

388. This clause deals with the second and third special rules (see paragraph 381). It is based on paragraph 5D of Schedule 18 to ICTA.

Clause 81: Cases in which sections 73, 75 and 77 all apply

389. This clause deals with the first, second and third special rules (see paragraph 381). It is based on paragraph 5E of Schedule 18 to ICTA.

Clause 82: Cases in which surrendering or claimant company is non-UK resident

390. This clause introduces special rules about equity holders in non-UK resident companies. It is based on paragraph 5F of Schedule 18 to ICTA.

391. *Subsection (1)* sets the scope of the clause.

392. *Subsection (2)* applies the special rules in clause 83 if the equity holder's rights are used to establish whether or not a non-UK resident company is owned by a consortium.

393. *Subsection (3)* applies the special rules in clause 83 if the equity holder's rights are used to establish whether or not a non-UK resident company is a subsidiary of another company.

394. *Subsection (4)* applies the special rules if ("Case 1") the equity holder's rights are referable to the profits or assets of the non-resident company's "UK trade". It also operates in this way if ("Case 2") the equity holder has rights under an option arrangement which are referable to the profits or assets of the non-resident company's UK trade. The extent to which profits or assets are referable to the company's UK trade is determined in accordance with clause 85.

Clause 83: Determining company A's proportion if non-UK resident involved

395. This clause is the main special rule about equity holders in non-UK resident companies. It is based on paragraph 5F of Schedule 18 to ICTA.

396. *Subsection (1)* introduces the clause: *subsection (2)* applies in cases where there are no limited rights, temporary rights or option arrangements; *subsection (3)* applies in other cases.

397. *Subsection (2)* deals with the straightforward case in which none of clauses 73 (limited rights), 75 (temporary rights) or 77 (options) applies. The alternative proportion calculated on the assumptions in clause 84 is used if it is lower than the proportion that would otherwise be used.

398. *Subsection (3)* is a method statement which deals with the more complicated cases involving clauses 73 (limited rights), 75 (temporary rights) and 77 (options), either singly or in the various possible combinations (see clauses 78 to 81). The rule is that any calculations under those clauses is done again using the assumptions in clause 84 and the result of that calculation is used if it is lower than the proportion would otherwise be.

Clause 84: Assumptions to be applied if non-UK resident company involved

399. This clause sets out how to calculate the "alternative proportion" for clause 83. It is based on paragraph 5F of Schedule 18 to ICTA.

400. All the calculations under clause 83 are done by reference to amounts that are "referable to company B's UK trade" (defined in clause 85).

401. Assumption 4 refers (three times) to beneficial entitlement but paragraph 5F(7)(c) and (8) of Schedule 18 to ICTA refer only to entitlement. This is not a change in the law because the option arrangements are relevant only if they are used for a "determination" to be made under paragraph 5F(4) or (5) of the Schedule. The determination is made under paragraph 2(1) or 3(1) of the Schedule. Those subparagraphs make clear that the Schedule is concerned only with beneficial entitlements.

Clause 85: Assets etc referable to UK trade

402. This clause determines the extent to which amounts are referable to a company's "UK trade". It is based on paragraph 5F of Schedule 18 to ICTA.

403. *Paragraph (b)* of the clause excludes amounts attributable to activities that are "double taxation exempt". That expression is defined in clause 86.

Chapter 7: Definitions and miscellaneous provisions

Overview

404. This Chapter contains definitions and two minor rules.

Clause 86: Meaning of “double taxation exempt” activities

405. This clause explains what is meant by activities that are double taxation exempt. It is based on section 403D(7) and (10) of ICTA.

406. The definition is used in clauses 11(4), 12(3), 44(6), and 85(2).

407. *Subsection (1)* makes the link between the *activities* that are described in the Bill as exempt and the *profits* from those activities which are the subject of exemption under a double taxation arrangement.

408. *Subsection (2)* makes clear that activities are to be treated as exempt whether or not any necessary claim for exemption is actually made.

409. *Subsection (3)* defines “double taxation arrangements” by reference to section 788 of ICTA. They are:

... arrangements ... made in relation to any territory outside the United Kingdom with a view to affording relief from double taxation in relation to-

- (a) income tax,
- (b) corporation tax in respect of income or chargeable gains, and
- (c) any taxes of a similar character to those taxes imposed by the laws of that territory ...

Clause 87: Meaning of “non-UK tax”

410. This clause defines “non-UK tax” for this Part of the Bill. It is based on sections 403D and 403E of, and paragraph 17 of Schedule 18A to, ICTA. The expression is used in clauses 10 to 13 and 19 to 25.

411. *Subsection (1)* is the basic rule that the non-UK tax must correspond to United Kingdom income tax or corporation tax.

412. *Subsection (2)* makes clear that the non-UK tax need not be a national tax: it may be a tax imposed by a province or state of a foreign country.

Clause 88: Other definitions that apply for the purposes of the Part

413. This clause sets out definitions of expressions used in the Part. It is based on section 413 of ICTA.

Clause 89: Payments for group relief

414. This clause takes outside the tax system any payments for group relief. It is based on section 402(6) of ICTA.

415. Originally (from 1953 to 1967) a form of group relief was available, based on “subvention” payments from one company to another. The payment was allowed as a

Corporation tax: Bill 6
Group relief
October 2007: Committee paper CC/SC (07) 27

deduction, reducing the profits of the paying company; and it was a taxable receipt of the company receiving the payment. Such payments are no longer required by United Kingdom tax law. But they may be made by agreement between group members. This clause ensures that they are neither allowed as a deduction nor taxed.

416. To be consistent with other references in the Bill, this clause refers to the “income and chargeable gains” of either company. We think that there is no need to refer specifically to “losses”.

Clause 90: References to “allowance” in CAA 2001

417. This clause clarifies the position if capital allowances are surrendered as group relief. It is based on section 411(10) of ICTA.

418. Capital allowances surrendered as group relief still count as having been made to the surrendering company. This means that a balancing charge on the surrendering company will take those surrendered allowances into account.

ANNEX 1: MINOR CHANGES TO THE LAW MADE BY THE BILL

Change 1: Multiple claims for group relief: clause 45

This change clarifies the position if more than one claim is made for a company's loss etc.

Section 403A of ICTA limits a group relief claim to the smaller of:

- the "unused part of the surrenderable amount"; and
- the "unrelieved part of the claimant company's total profits".

Any claim for group relief reduces the surrendering company's unused part of the surrenderable amount and the unrelieved part of the claimant company's total profits. In general, earlier claims limit the amounts of later claims. So, in dealing with multiple claims, it is necessary to know in what order to deal with the claims.

Before Self Assessment for companies it was possible to say when a claim became final. Usually, that would be because the inspector had made an assessment giving effect to the relief and the appeal period had expired. So section 403A(5) of ICTA identifies the previously claimed group relief as that which has been the subject of claims that have become final.

Under Self Assessment it is not generally possible to know whether an enquiry will be made (paragraph 24 of Schedule 18 to FA 1998), so extending the time limit for withdrawing claims (paragraph 74(1)(b) of the Schedule). To overcome this practical difficulty there is a practice, set out in paragraph 80220 of the HMRC Company Taxation Manual, of simply dealing with claims in the order in which they are made (whether or not they are final).

This Bill enacts the practice.

This change has no implications for the amount of tax paid, who pays it or when. It affects (in principle but not in practice) only administrative matters.

Change 2: Group relief: restriction of surrender by company owned by consortium: clause 52

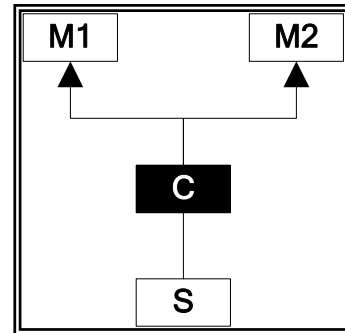
This change relaxes the restriction that is made when group relief is surrendered by a company that is owned by a consortium and is also a member of a group.

The policy is that the total relief surrendered outside the group should not exceed the net loss (if any) of the group as a whole. So the losses etc of the surrendering

company are treated for this purpose as reduced by any group relief claims that could be made by other companies in the group.

Example 1

A company (C) owned by a consortium has a trading loss of £10,000 for its accounting period of 12 months ended 31 December 2009 available for surrender to the members (M1, M2 etc) of the consortium. C's subsidiary (S) has profits of £2000 for its accounting period of 12 months ended 31 December 2009.



Under section 405(2) of ICTA, S is assumed to make a group relief claim to cover its profits. S's corresponding accounting period (see section 413(2A) of ICTA) is the 12 months ended 31 December 2009. So the assumed claim is for £2000 and (because no other companies are involved) that is the amount of the "potential group relief". So C's "loss or other amount" available for surrender to M1, M2 etc is reduced under section 405(1) of ICTA to £8000, the net loss of the group as a whole.

Example 2

The facts are the same as in Example 1 except that S's accounting date is 30 September. The effect of section 413(2A) of ICTA is that, in relation to C's accounting period ended 31 December 2009, S's corresponding accounting period is the whole of the 12 months ended 30 September 2009.

The effect of section 405(2) of ICTA is that S is assumed to make a claim for group relief equal to the total of its profits of its entire accounting period ended 30 September 2009 (that is, its corresponding accounting period). Section 405 of ICTA does not provide for an apportionment of S's profits, even though S could actually claim relief against no more than £1500, its profits attributable to the "overlapping period" (see section 403A of ICTA). So the £2000 restriction stands.

In subsection (5) of this clause of the Bill step 3 allows an apportionment of a company's total profits in arriving at the "group's potential relief". This makes no difference in Example 1. But in Example 2 C's loss available for surrender is treated as reduced to £8500, instead of £8000.

This change is in taxpayers' favour in principle and may benefit some in practice. But the numbers affected and the amounts involved are likely to be small.