

EXPLANATORY NOTE

CLAUSE 31 SCHEDULE 12: GROUPS – REALLOCATION OF CHARGEABLE GAINS

AMENDMENT 18

SUMMARY

1. This Amendment corrects a technical defect in Schedule 12 of the Bill. Clause 31 and Schedule 12 simplify the rules that allow groups of companies to elect to match the chargeable gains and allowable losses that arise on the disposal of assets. Currently, an election can only be made where there is a disposal of an asset outside the group. The effect of an election is to deem that the asset had been transferred from one company to another before the disposal outside the group. However, such an election cannot currently be made in all the circumstances in which gains or losses can arise; for example where there is no disposal to a third party.

DETAILS OF THE AMENDMENT

2. New section 171A(1A) of the Taxation of Chargeable Gains Act 1992 (TCGA) modifies the application of section 171(1A)(b) TCGA in its application for the purposes of the new section 171A.
3. Section 171(1A)(b) sets out the condition to be fulfilled by the recipient of an asset on transfer from another company in the same group if no-gain, no-loss treatment is to apply to that transfer. Where the recipient is not resident in the United Kingdom, the condition is that the asset is a chargeable asset in relation to that company. A chargeable asset is one on which any gain from a disposal would be a chargeable gain, and form part of the company's chargeable profits. This requirement cross-refers to section 10B TCGA, which, without the modification provided by amendment [99], limits the chargeable profits to gains on assets that are situated in the United Kingdom and used for the purposes of the trade of a permanent establishment.
4. Under the amended rule, the only condition to be fulfilled by a recipient of the gain or loss to be reallocated to a non-resident group company making an election under new section 171A TCGA is that they are carrying on a trade in the United Kingdom through a permanent establishment.
5. The effect of the amendment is to remove any doubt that non-resident companies can have a gain or loss reallocated to them as the result of

an election under new section 171A. There is no need for the asset in respect of which a gain or loss has accrued, and for which an election is to be made under new section 171A TCGA, to be situated in the United Kingdom and used for the purposes of the trade of the non-resident's UK permanent establishment.

BACKGROUND NOTE

6. The new provisions are intended to reduce compliance costs for groups of companies by providing a simpler and comprehensive means of transferring gains and losses so as to allow full matching of gains and losses that arise within different companies in a group.
7. The existing section 171A of TCGA is less comprehensive. It allows group companies to make an election only where there is a disposal of an asset outside the group. The effect of an election under the current provision is to treat that asset as having been transferred between the companies immediately before the disposal outside the group.
8. The Amendment corrects a technical defect in the Schedule that would have prevented it applying in cases where a group wishes to reallocate a chargeable gain or loss to a non-resident group member that trades in the UK through a permanent establishment here.

Schedule 12, page 128, line 5, at end insert—

- ‘(1A) In determining for the purposes of subsection (1)(c) whether subsection (1) of section 171 would have applied, it is to be assumed that subsection (1A)(b) of that section read—
- (b) that, at the time of the disposal, company B is resident in the United Kingdom, or carrying on a trade in the United Kingdom through a permanent establishment there.’