

EXPLANATORY NOTE

CLAUSE 6 SCHEDULE 2: RATE ETC.: AMENDMENTS 53 TO 55

SUMMARY

1. Amendments 53 to 55 expand the new section 165A of the Taxation of Chargeable Gains Act 1992 (TCGA) which is introduced by paragraph 34 to Schedule 2 of the Finance Bill. Section 165A provides the meaning of “holding company”, “trading company” and “trading group” for certain purposes of the TCGA (including the new entrepreneurs’ relief). The amendments have the effect that, where a company has a “qualifying shareholding” in a “joint venture company”, the company is treated as carrying on a part of the activities of the joint venture company proportionate to its shareholding. The amendments also produce an equivalent effect where members of a group of companies hold qualifying shareholdings in a joint venture company.

DETAIL OF THE AMENDMENTS

2. Amendment 53 adds a new subsection (6A) to the new section 165A TCGA. The new subsection applies where a company has a “qualifying shareholding” in a joint venture company.
3. Section 165A(12) defines a qualifying shareholding in relation to a joint venture company as the holding by a single company of 10% or more of the ordinary share capital of the joint venture company. And where members of a group of companies together hold at least 10% of the ordinary share

capital of a joint venture company, each company that holds some of the shares has a qualifying shareholding.

4. Section 165A(12) also provides the definition of a “joint venture company”. A company is a joint venture company if it is a trading company, or the holding company of a trading group and at least 75% of its ordinary share capital is held by 5 or fewer persons (treating a group of companies as a single person for this purpose).
5. The effect of the new section 165A(6A) is that, in determining whether a company’s activities include a substantial amount of non-trading activities, the holding of shares in a joint venture company is disregarded, and the company is treated as carrying on a part of the joint venture company’s activities, in proportion to the size of its holding of ordinary share capital in the joint venture company. Where the joint venture company is the holding company of a group, the shareholder company is treated as carrying on a proportionate part of that group’s activities.
6. Amendment 54 adds a new subsection (10A) to section 165A. This subsection works in exactly the same way as subsection (6A), for the purpose of determining whether a group of companies is a trading group. Qualifying shareholdings in the joint venture company held by group members are disregarded, and each group member is treated as carrying on part of the activities of the joint venture company, or of the joint venture company’s group, in proportion to the size of its holding of ordinary share capital in the joint venture company.
7. Amendment 55 is consequential upon the changes to section 165A made by amendments 53 and 54. It ensures that

throughout section 165A the activities of a group (including a group headed by a joint venture company) are treated as one business.

BACKGROUND

8. Section 165A TCGA provides rules for determining whether, for the purposes of section 165, a company is a trading company or a group of companies is a trading group. Section 165 allows for the “holding over” of a gain accruing on the gift of shares in a trading company (or in the holding company of a trading group). Section 165A also applies for determining whether a company (or group) is a trading company (or group) for the purposes of the new entrepreneurs’ relief introduced into the TCGA by Schedule 3 to the Finance Bill.
9. Before the abolition of taper relief, the rules now in section 165A were found at paragraphs 22(1) and 22A to 23 of Schedule A1 to the TCGA, and were adopted for the purposes of section 165 by subsection (8)(aa) of that section. As Schedule A1 is repealed by paragraph 45 of Schedule 2 to the Finance Bill, section 165A is introduced to retain the same effects.
10. Under section 165A(3), a company is a trading company (or under section 165A(7) a group is a trading group) provided that its activities do not include to a substantial extent activities that are not trading activities. The holding of shares in a trading company may be treated as an investment which is a non-trading activity. For taper relief shares held in a trading joint venture company were specifically disregarded as investments and instead a

proportionate share of the joint venture's activities was attributed. In the absence of this rule, section 165A could have the effect that a company or group fails to qualify as "trading" because it has a qualifying holding in a joint venture company.

11. The changes made by amendments 53 and 54 ensure that a company or group that was a trading company or group for the purposes of taper relief will continue to be a trading company or group under section 165A for the purposes of hold-over relief under section 165 and the new entrepreneurs' relief.
12. Amendment 55 ensures that in all cases, including when considering the activities of a group headed by a joint venture company, the provision of services by one member of the group to other members is disregarded. This means, for example, that the activities of a group company whose sole purpose is to hold property and let it to other group members will not be taken into account as non-trading activities in determining whether the group is a trading group.