

Amendment Numbers
Govt 79 + Govt 80 + Govt 81

Mr Stephen Timms

79 Clause 31, page 23, line 7,

leave out ‘and’

Mr Stephen Timms

80 Clause 31, page 23, line 7

At end insert –

‘(ca) after that paragraph insert-

“(ca) no qualifying change of ownership occurs at any time in relation to the principal company of that group for the purposes of section 184A of TCGA 1992 directly or indirectly in consequence of, or otherwise in connection with, any arrangements the main purpose, or one of the main purposes, of which is to secure a tax advantage falling within subsection (1)(d) of that section, and”,’.

81 Clause 31, page 23, line 34,

At end insert-

‘; but the amendment made by subsection (5)(ca) has no effect in relation to disposals made before 9th May 2007.’.

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EXPLANATORY NOTE

**GOVERNMENT AMENDMENT TO CLAUSE 31:
RESTRICTIONS ON COMPANIES BUYING LOSSES OR
GAINS: TAX AVOIDANCE SCHEMES**

SUMMARY

1. Amendments 79, 80 and 81 to clause 31 of the Finance Bill 2007 ensure that the simplification of the conditions relating to the use of certain capital losses realised by companies before 5 December 2005 does not create an opportunity for those losses to be used by groups other than the one in which they arose.
2. The details of these amendments were announced on 9 May 2007 and have effect in relation to disposals of assets taking place on or after that date.

DETAILS OF THE AMENDMENTS

3. Amendment 79 removes “and” from the end of subsection (5)(c).
4. Amendment 80 brings in new subsection (5)(ca) which introduces a condition to subsection (9) of section 70 Finance Act 2006 (“FA 2006”). This provides that the relief for qualifying losses provided for in new subsections 70(10) to (13) of FA 2006 will cease to be available where there is a change of ownership of the principal company in a capital gains group and the main purpose, or one of the main purposes

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of that change of ownership was for the new owners to seek a tax advantage from those qualifying losses.

5. Amendment 81 makes a consequential change to the commencement provision for the clause, ensuring that the amendments are only effective in relation to pre-change assets disposed of on or after 9 May 2007.

BACKGROUND NOTE

6. Section 70 FA 2006 implemented targeted anti-avoidance rules in sections 184A and 184B of the Taxation of Chargeable Gains Act 1992 (“TCGA”) to prevent the practice of selling and buying companies in order to secure a tax advantage by gaining access to capital losses or gains incurred by those companies.
7. Section 70 also included specific rules for certain cases of qualifying changes of ownership and disposals occurring before 5th December 2005 which did not involve gain or loss buying. These transactions typically involved arrangements where a company holding assets standing at a loss left its original capital gains group for tax purposes, crystallising a tax loss under section 179 TCGA, but the company remained under the commercial control of its original parent.
8. Subsections 70(9) et seq. FA 2006 provide, in brief, that such qualifying losses can be relieved against gains on ‘pre-change assets’ held by any company that was in the same capital gains group as the company leaving the group immediately before it left, subject to certain conditions being met.
9. Clause 31 of the Finance Bill 2007 amends the original provisions in section 70 FA 2006 to retain this relief. It also relaxes the conditions in subsection 70(9), by allowing relief

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where there has been a sale or liquidation of the company whose departure from the group created the losses, or a take-over of the original parent company. Previously either of these events would have prevented any further use of qualifying losses.

10. The amendments to clause 31 prevents an avoidance opportunity by prohibiting relief for the qualifying losses where there is a change of ownership of the principal (parent) company and the principal company is acquired in consequence of arrangements where the main purpose or one of the main purposes is to secure a tax advantage which involves the deduction of a qualifying loss from a chargeable gain.