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HMRC internal manual

Corporate Intangibles Research and Development Manual

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[Back to contents](#) > [CIRD10000](#) > [CIRD40500](#)

CIRD40575 - Intangible assets: groups: degrouping: exception for degroupings qualifying for Substantial Shareholding Exemption - requirements

CTA09/PART8/S782A and CTA09/PART8/S785(2B)

Degrouping adjustments to which the exception applies

The SSE exception applies to the following degrouping adjustments provided for by Part 8:

- S780 – the exception is provided for by S782A.
- S783(3) – S783(2) works by deeming a S780 degrouping adjustment to have arisen. The exception to the S780 charge therefore also has effect for the purposes of S783.
- S785 – the exception is provided for by S785(2B).

In what circumstances does the exception apply?

In order for the exception to apply, the company in question must cease to be a member of a group because of a disposal of shares by another company.

That share disposal must also be a “relevant” disposal. A share disposal is “relevant” if it meets two requirements:

1. Any gain on the disposal would not be chargeable to CT because of the SSE, and
2. The disposal is not part of an arrangement under which the recipient of the shares is to dispose of them to another person.

These requirements are explained below.

Requirement 1: SSE

The first requirement that must be met for a share disposal to be relevant is that the company making the disposal would not be chargeable to CT in respect of any gain accruing on the disposal by reason of the main SSE (paragraph 1 of Schedule 7AC TCGA92). Note that this requirement looks only at the CG treatment of the share disposal, and does not refer to the Part 8 intangibles rules. It effectively imports from the CG rules a requirement that the company (or sub-group of

companies) being degrouped is a trading company (or trading sub-group), with no substantial non-trading activities.

This requirement is a hypothetical test. It will be met where, had the disposal resulted in a chargeable gain, that gain would have been exempt under the main SSE. It is not necessary for the disposal to have actually resulted in a chargeable gain that was exempted: the exception is also capable of applying where the share disposal takes place at a loss, or break-even.

This requirement is subject to two assumptions:

The first assumption

Firstly, it is assumed that the company making the disposal was within the charge to corporation tax. This ensures that the exception is available where any gain on the disposal would be exempted by the SSE, but for the fact it is made by a non-UK resident intermediate holding company and would therefore be outside the scope of UK corporation tax altogether.

The second assumption

Secondly, in determining whether any gain on disposal would be exempt, paragraph 6 of Schedule 7AC to TCGA 1992 is ignored. Paragraph 6 contains rules, referred to above, that deny the SSE in the following cases:

- where the share disposal is a no gain/no loss disposal,
- where the gain would not have been a chargeable gain because of some other provision, and
- where the gain arises to an insurance company on a certain type of deemed disposal.

Because the rule that denies SSE for disposals that are deemed to take place at no gain/no loss is removed, this requirement can be met where the share disposal is part of a scheme of

reconstruction within the scope of S139 TCGA 1992.

This second assumption only applies in relation to degroupings occurring on or after 21 December 2018.

Requirement 2: no arrangements for onward sale

The second requirement is that the share disposal must not be part of an arrangement under which the recipient of the shares is to dispose of them to another person. The objective of this requirement is to prevent the exception from applying to multi-step transactions where the SSE may not be met in relation to every disposal of the shares.

This requirement is tested at the time of the share disposal. It will not, therefore, be failed if there are no arrangements in place at the time of the disposal. This is the case even if the recipient subsequently makes a commercial decision, independently of the original seller, to sell the shares on to another person. It is the responsibility of the parties to satisfy themselves and/or include appropriate protections that this requirement is met.

← **Previous page**

(/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird40570)

→ **Next page**

(/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird40580)



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