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Corporate Intangibles Research and Development Manual

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CIRD40030 - Intangible assets: groups: definitional rules

CTA09/S764-S773

The above sections set out the rules for determining whether a company is a group member for the purposes of CTA09/PART8.

The 75% test

A company, referred to as the `principal company of the group', and all its 75% subsidiaries form a

group, together with any 75% subsidiaries of those subsidiaries, and so on. This 75% subsidiary requirement is in terms of beneficial ownership of ordinary share capital, as set out in CTA10/S1154.

Ordinary share capital is defined by CTA10/S1119 as meaning all a company's issued share capital, however named, but excluding that share capital whose holders have a right to fixed-rate dividends, but no other right to share in the company's profits. In applying this definition, any share capital of a registered industrial or provident society is treated as ordinary share capital.

As a result company Y is a 75% subsidiary of company X if company X beneficially owns, directly or indirectly, 75% cent or more of the ordinary share capital of company Y.

In determining whether company A is a 75% subsidiary of company B, no account should be taken of shares in A held directly by B on trading account, or of shares owned indirectly by B in another corporate body in whose books they would be on trading account.

Effective 51% subsidiary test

But in addition to the 75% test, a subsidiary can only be a group member if it is also an 'effective 51% subsidiary' of the principal company. This means that the principal company must have a beneficial entitlement (either direct or indirect) to more than 50% of the subsidiary's profits available for distribution to equity holders, and that it would be beneficially entitled to more than 50% of the assets available for distribution to the equity holders in the event of a winding up.

There is an example of the 75% and 51% subsidiary tests at [CIRD40035](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird40035) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird40035>).

Non residents

There is no requirement in the CTA09/PART8 legislation excluding companies that are not resident in the UK from the definition of a group. Instead the detailed rules listed in [CIRD40020](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird40020) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird40020>) contain whatever provision is necessary to ensure that they are appropriately targeted.

Company - CTA09/S764

A concern may be regarded as a member of a group for the purposes of CTA09/PART8 only if it is:

- a company within the meanings of the Companies Act 2006, or the equivalent Northern Ireland legislation, or
- a company (other than a limited liability partnership) constituted under any other Act, or by a Royal Charter, or letters patent, or
- a company formed under foreign law, or
- a friendly society, industrial or provident society, or a building society.

If the company is set up under foreign law then the meaning of the expressions 'subsidiary' and 'group' may need to be construed accordingly to reflect the different legal framework.

CTA10/CHAPTER6

CTA09/S772 attracts the rules concerning group membership in CTA10/CHAPTER 6 (formerly ICTA88/SCH18, see CTM81000 onwards) to determine:

- whether one company is an effective 51% subsidiary of another (see above), and

- to help determine to which group a company belongs if under the general rules it could be regarded as a member of more than one ([CIRD40040 \(https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird40040\)](https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird40040)).

Statutory bodies - TCGA92/S170 (12) to (14)

Certain statutory bodies which are created by statute to run an industry (or part of an industry) under public ownership, in particular those set up under the Transport Acts of 1962 and 1968, can be treated as companies for the purposes of testing whether their subsidiaries form a group with them. This is achieved by CTA09/S773 which applies the provisions in the heading above.

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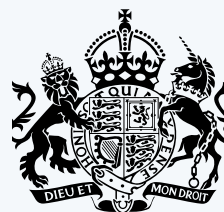
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