

Conditions applicable where purchasing company is member of a group. FA91 s64 179.—(1) Subject to subsections (2) to (4), in this section, “group” means a company which has one or more 51 per cent subsidiaries but is not itself a 51 per cent subsidiary of any other company, together with those subsidiaries.

(2) Where the whole or a significant part of the business carried on by an unquoted company (in this section referred to as “the successor company”) was previously carried on by—

(a) the company making the purchase, or

(b) a company which apart from this subsection is a member of a group to which the company making the purchase belongs,

the successor company and any company of which it is a 51 per cent subsidiary shall be treated as being a member of the same group as the company making the purchase, whether or not apart from this subsection the company making the purchase is a member of a group.

(3) Subsection (2) shall not apply if the successor company first carried on the business referred to in that subsection more than 3 years before the time of the purchase.

(4) For the purposes of this section, a company which has ceased to be a 51 per cent subsidiary of another company before the time of the purchase shall be treated as continuing to be such a subsidiary if at that time there exist arrangements under which it could again become such a subsidiary.

(5) Subject to section 181, where the company making the purchase is immediately before the purchase a member of a group and immediately after the purchase—

(a) the vendor owns shares in one or more other members of the group, whether or not the vendor then owns shares in the company making the purchase, or

(b) the vendor owns shares in the company making the purchase and immediately before the purchase the vendor owned shares in one or more members of the group,

the vendor's interest as a shareholder in the group shall be substantially reduced.

(6) Subject to section 181, where the company making the purchase is immediately before the purchase a member of a group, and at that time an associate of the vendor owns shares in any member of the group, the combined interests as shareholders in the group of the vendor and the vendor's associates shall be substantially reduced.

(7) Subject to subsection (8), in subsections (9) to (11), “relevant company” means the company making the purchase and any other company—

(a) in which the vendor owns shares, and

(b) which is a member of the same group as the company making the purchase,

immediately before or immediately after the purchase.

(8) The question whether the combined interests as shareholders in the group of the vendor and the vendor's associates are substantially reduced shall be determined in the same way as is (under this section) the question whether a vendor's interest as a shareholder in a group is substantially reduced, except that the vendor shall be assumed to have the interests of the vendor's associates as well as the vendor's own interests, and references in subsections (9) to (11) to a relevant company shall be construed accordingly.

(9) The vendor's interest as a shareholder in the group shall be ascertained by—

(a) expressing the total nominal value of the shares owned by the vendor in each relevant company as a percentage of the issued share capital of the company,

(b) adding together the percentages so obtained, and

(c) dividing the result by the number of relevant companies (including any in which the vendor owns no shares).

(10) Subject to subsection (11), the vendor's interest as a shareholder in the group shall be taken to be substantially reduced only if it does not exceed 75 per cent of the corresponding interest immediately before the purchase.

(11) The vendor's interest as a shareholder in the group shall not be taken to be substantially reduced where—

(a) the vendor would, if every member of the group distributed all its profits available for distribution immediately after the purchase (including any profits received by it on a distribution by another member), be entitled to a share of the profits of one or more of them, and

(b) that share, or the aggregate of those shares, expressed as a percentage of the aggregate of the profits available for distribution of every member of the group which is—

(i) a relevant company, or

(ii) a 51 per cent subsidiary of a relevant company,

exceeds 75 per cent of the corresponding percentage immediately before the purchase.

(12) Subsections (6) and (7) of section 178 shall apply for the purposes of subsection (11) as they apply for the purposes of subsection (5) of that section.