Groups of Companies

Part 20-01-03

This document should be read in conjunction with section 616 of the Taxes Consolidation Act 1997.

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1.1 **Sections 616** contains the interpretational rules for **Part 20 Chapter 1 TCA 1997**.It provides, inter alia, that:

- Any reference to a company in **section 616** (which defines a group of companies) is a reference to a company which is resident in a relevant Member State for the purposes of a tax which corresponds to Irish corporation tax. A relevant Member State means a Member State of the European Communities, or if not a Member State, an EEA State whose government has made arrangements which have the force of law by virtue of **section 826(1).**

- "Company" means any company which is a body corporate. The term does not include a health board, a vocational education committee, an agricultural committee or a local authority. Registered industrial and provident societies within the meaning of **section 698** and building societies are, however, specifically within the definition (**section 616(2)(d)**).

- A principal company and all its 75 per cent subsidiaries form a group.

- Where a principal company is itself a 75 per cent subsidiary in a group, that group comprises all that company's 75 per cent subsidiaries, i.e. a group may comprise a principal company and its 75 per cent subsidiaries and 75 per cent sub-subsidiaries.

- A principal company is a company of which some other company is a 75 per cent subsidiary.

- A 75 per cent subsidiary can be identified from the general definition of subsidiaries in **section 9**.

- **Section 616(1)(d)** provides that the share capital of a registered industrial and provident society is to be treated as within the definition of "ordinary share capital"

- The liquidation or winding-up of a company (see **Part 19-03-08 par. 1** et seq.) is not to be regarded as the occasion on which that company or any of its subsidiaries cease to be a member of a group of companies.

1.2 **Section 9** contains exhaustive rules for determining the proportion of the ordinary share capital of one body corporate held directly or indirectly by another body corporate. The rules will be found to conform to the principle that, where a body owns a fraction (using that term to include unity) of the ordinary share capital of a second body which owns a fraction of the ordinary share capital of a third body, then the first body is deemed to own such fraction of the ordinary share capital of the third body as is arrived at by multiplying the two fractions together and so on.

Thus, in a case in which A owns 90 per cent of the ordinary share capital of B, and B owns 90 per cent of the ordinary share capital of C, the effect of the rules is that A is deemed to own indirectly 81 per cent of the ordinary share capital of C. As that percentage is not less than 75 per cent, C is deemed to be a 75 per cent subsidiary of A, C is also a 75 per cent subsidiary of B, and may, in addition, be a 75 per cent, subsidiary of other companies, e.g., a company which owns the whole of the ordinary share capital of A.

If the relationship of a first body to, say, a fifth body is under consideration, the first body may own one fraction directly, another through one intermediary or intermediaries and another fraction through another channel. In such a case, the various fractions are aggregated so as to arrive, without duplication, at the total fraction of the ordinary share capital of the fifth body held by the first. Thus, if A owns directly 50 per cent of the ordinary share capital of E, and is found to own indirectly a further 25 per cent of that capital, A's total ownership is 75 per cent and E is deemed to be a 75 per cent subsidiary of A.

"Ordinary share capital" means all the issued share capital (by whatever name called) of the company, other than share capital which carries a right to a dividend only at a fixed rate but does not have any other right to share in the profits of the company.

1.3 From 1 January 2006 where a company that is the principal company of a group of companies becomes an SE by reason of being the acquiring company in the formation of an SE, a subsidiary of a holding SE, is transformed into an SE, or becomes an SCE in the course of a merger to form an SCE, then the group of which the company was the principal company up to the time the SE/SCE was formed and any group of which the SE/SCE is a member on its formation will be regarded as the same group.