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## SUBSTANTIAL SHAREHOLDINGS EXEMPTION (SSE)

The SSE provisions exempt from UK tax any gains, and disallow relief for any losses, realised by trading companies and groups on the disposal of qualifying substantial shareholdings.

The legislation applies automatically if certain detailed conditions are satisfied, subject to anti-avoidance provisions which are designed to prevent the legislation being applied solely to obtain a tax advantage.

The legislation does not cover gains or losses on shares held on trading account or on securities held under the loan relationships or derivatives provisions.

The exemption applies where the provisions are met with relation to:

- the shareholding in the target company;
- the holding and target companies.

### Shareholding in the target company

For the legislation to apply, the holding company must have held a 'substantial shareholding' in the target company for a continuous 12 month period within the six years ending with the date of disposal.

For these purposes, a substantial shareholding is defined as one of not less than 10% of the ordinary share capital, which carries an entitlement to not less than 10% of the profits available for distribution and the assets available for distribution on a winding-up.

One point to watch is that the existence of a substantial loan held by a third party could jeopardise the requirement for entitlement to not less than 10% of the assets on a winding-up. It is, therefore, necessary to review the position in detail before making any disposal of the shares.

### The holding and target companies

Since 1 April 2017 the holding company does not have to be a trading company or a member of a trading group either during or after the shareholding period.

There is provision for SSE to apply on liquidation of a company if it would have met the tests previously and the liquidation takes place in a 'reasonable' timescale.

The condition for the target company is broadly the same. It has to be a trading company, or a member of a trading group, throughout the 12 month ownership period.

A trading company is defined as one where the company's activities do not include, to any substantial extent, activities other than trading activities. The same definition applies, broadly, to a trading group. The term 'substantial' is not defined in the legislation, but HMRC's guidance states substantial means

more than 20%. The same guidance states that some or all of the indicators that might be taken into account in reviewing trading status could include:

- the level of turnover received from non-trading activities;
- the value of non-trading assets in relation to the value of all assets;
- the expenditure incurred or time spent by officers and employees on non-trading activities;
- the company's history.

It is necessary, though, to bear in mind that the indicators are not individual definitive tests to which a 20% limit applies. The overall status of the company or group has to be considered in the round. If there is any uncertainty about the position it may be possible to obtain clearance from HMRC that the exemption would apply.

Since 1 April 2017 there is a new category of SSE where the selling company is owned by certain specified 'qualifying institutional investors'. There is a detailed list of such investors including pension funds, charities, life assurance, businesses and investment trusts. Please note this is not a complete list.

For the qualifying institutional investors exemption there are certain other relaxations:

- the target company will not have to be a trading company at any time; and
- if the selling company holds less than 10% of the target company, SSE is still available if the shareholding cost more than £20m.

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