

Changes to legislation: Energy Act 2004, Part 1 is up to date with all changes known to be in force on or before 22 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

SCHEDULE 9

TAXATION PROVISIONS RELATING TO NUCLEAR TRANSFER SCHEMES

PART 1

TRANSFERS TO THE NDA OR A SUBSIDIARY OF THE NDA

Trading losses: transfer of company carrying on exempt activities

- 1 (1) This paragraph applies for the purposes of corporation tax where—
- (a) in consequence of a section 39 scheme, a company which is not an NDA company becomes an NDA company falling within section 27(4)(a); and
 - (b) the company carried on exempt activities before the coming into force of the scheme.
- (2) Trading losses attributable to the exempt activities carried on by the company before the coming into force of the scheme shall be treated, in relation to accounting periods beginning at or after that time, as extinguished.
- (3) For the purpose of determining the extent to which trading losses incurred by a company are attributable to exempt activities, such apportionments of receipts, expenses, assets and liabilities shall be made as may be just.

Commencement Information

- II** Sch. 9 para. 1 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

Trading losses: transfer of undertaking carrying on exempt activities

- 2 (1) This paragraph applies for the purposes of corporation tax where—
- (a) a company (“the transferor company”) which is not an NDA company is carrying on a trade which consists in or includes exempt activities; and
 - (b) in consequence of a section 39 scheme—
 - (i) the transferor company ceases to carry on that trade or a part of it which consists in or includes such activities; and
 - (ii) the NDA or an NDA company begins to carry on that trade or that part of it.
- (2) Trading losses attributable to so much of the trade or part of a trade as consists in exempt activities carried on by the transferor company before the time when the NDA or the NDA company begins to carry on the trade or that part of it shall be treated, in relation to accounting periods ending after that time, as extinguished.

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- (3) [^{F1}Sections 944 and 951 to 953 of the Corporation Tax Act 2010 (transfers of trade without a change of ownership)] shall apply in relation to an unextinguished loss sustained by the transferor company in carrying on the trade or the part of it in question as if—
- (a) the case were a case falling within [^{F2}Chapter 1 of Part 22 of that Act];
 - (b) the transferor company were the predecessor; and
 - (c) the NDA or the NDA company in question were the successor.

Textual Amendments

- F1** Words in [Sch. 9 para. 2\(3\)](#) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 438\(2\)\(a\)](#) (with [Sch. 2](#))
- F2** Words in [Sch. 9 para. 2\(3\)\(a\)](#) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 438\(2\)\(b\)](#) (with [Sch. 2](#))

Commencement Information

- I2** [Sch. 9 para. 2](#) in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

Chargeable gains: assets to be treated as disposed without a gain or a loss

- 3 (1) This paragraph applies for the purposes of the 1992 Act where there is a transfer of an asset to the NDA or a subsidiary of the NDA in accordance with a section 39 scheme.
- (2) The asset shall be treated as disposed of to the NDA or (as the case may be) to its subsidiary for a consideration of such amount as would secure that, on the disposal, neither a gain nor a loss accrues to the transferor.
- (3) This paragraph has effect subject to paragraph 4.
- (4) This paragraph does not apply in relation to a transfer to the NDA or to a subsidiary of the NDA in accordance with a nuclear transfer scheme of securities of a company, in consequence of which that company ceases to be a relevant site licensee.
- (5) In this paragraph “relevant site licensee” has the same meaning as in subsection (4) of section 27 (see subsection (5)).

Commencement Information

- I3** [Sch. 9 para. 3](#) in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

Chargeable gains: assets treated as acquired at nil cost

- 4 (1) This paragraph applies for the purposes of the 1992 Act where the NDA or a subsidiary of the NDA disposes of an asset which—
- (a) was acquired by the NDA or that subsidiary in accordance with a section 39 scheme or a section 40 scheme; and
 - (b) is not an asset which, immediately before its transfer to the NDA or that subsidiary, was comprised in the Nuclear Liabilities Investment Portfolio.

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- (2) No amount shall be allowable as a deduction under section 38(1)(a) or (b) of the 1992 Act (acquisition and enhancement costs) in the computation of the gain accruing on the disposal.
- (3) Accordingly, in a case where the disposal is one which under any enactment is treated as a disposal on which neither a gain nor a loss accrues to the NDA or its subsidiary, the consideration for the disposal shall be treated as equal to the amount allowable as a deduction from that consideration under section 38(1)(c) of the 1992 Act (incidental costs of disposal).
- (4) This paragraph does not apply in the case of a disposal which under paragraph 29 is to be treated as a disposal on which neither a gain nor a loss accrues to the NDA or a subsidiary of the NDA.

Commencement Information

I4 Sch. 9 para. 4 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

Chargeable gains: degrouping charges

- 5
- (1) This paragraph applies if a company (“the degrouped company”)—
 - (a) acquired an asset from another company at a time when both were members of the same group of companies (“the old group”); and
 - (b) ceases, by virtue of a transfer to the NDA or a subsidiary of the NDA in accordance with a section 39 scheme, to be a member of the old group.
 - (2) Section 179 of the 1992 Act (company ceasing to be member of group) is not to treat the degrouped company as having by virtue of the transfer sold and immediately reacquired the asset.
 - (3) Where sub-paragraph (2) has applied to an asset, section 179 of the 1992 Act is to have effect on and after the first subsequent occasion on which the degrouped company ceases to be a member of a group of companies (“the new group”) as if—
 - (a) the degrouped company, and
 - (b) the company from which it acquired the asset,had been members of the new group at the time of acquisition.
 - (4) Expressions used in this paragraph and in section 179 of the 1992 Act have the same meanings in this paragraph as in that section.

Commencement Information

I5 Sch. 9 para. 5 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

Chargeable gains: disposal of debts

- 6
- (1) This paragraph applies if—
 - (a) a debt owed to any person is transferred to the NDA or a subsidiary of the NDA in accordance with a section 39 scheme; and

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- (b) the transferor would (apart from this paragraph) be the original creditor in relation to that debt for the purposes of section 251 of the 1992 Act (disposal of debts).
- (2) The 1992 Act is to have effect as if the NDA or (as the case may be) its subsidiary (and not the transferor) were the original creditor for those purposes.

Commencement Information

I6 Sch. 9 para. 6 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

Capital allowances: transfer of whole trade

- 7 (1) This paragraph applies where—
- (a) a company (“the transferor company”) which is not a subsidiary of the NDA is carrying on a trade; and
 - (b) in consequence of a section 39 scheme, the transferor company ceases to carry on that trade and the NDA or a subsidiary of the NDA begins to carry it on.
- (2) For the purposes of the allowances and charges provided for by the 2001 Act, the trade is not to be treated as permanently discontinued, nor a new trade as set up; but sub-paragraphs (3) and (4) of this paragraph are to apply.
- (3) There are to be made to or on the NDA or (as the case may be) its subsidiary, in accordance with the 2001 Act, all such allowances and charges as would, if the transferor company had continued to carry on the trade, have fallen to be made to or on that company.
- (4) The amounts of those allowances and charges are to be computed as if—
- (a) the NDA or its subsidiary had been carrying on the trade since the transferor company began to do so; and
 - (b) everything done to or by the transferor company had been done to or by the NDA or that subsidiary;
- but so that transfers in accordance with the section 39 scheme, so far as they relate to assets in use for the purposes of the trade, shall not be treated as giving rise to an allowance or charge.

Commencement Information

I7 Sch. 9 para. 7 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

Capital allowances: transfer of part of a trade

- 8 (1) Where—
- (a) a company (“the transferor company”) which is not a subsidiary of the NDA is carrying on a trade, and
 - (b) in consequence of a section 39 scheme, the transferor company ceases to carry on that trade and the NDA or a subsidiary of the NDA begins to carry on activities of the trade as part of a trade carried on by the NDA or that subsidiary,

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then that part of the trade carried on by the NDA or its subsidiary shall be treated for the purposes of paragraph 7 as a separate trade.

- (2) Where—
- (a) a company (“the transferor company”) which is not a subsidiary of the NDA is carrying on a trade, and
 - (b) in consequence of a section 39 scheme, the transferor company ceases to carry on a part of that trade and the NDA or a subsidiary of the NDA begins to carry on activities of that part of that trade,
- then the transferor company shall be treated for the purposes of paragraph 7 and subparagraph (1) of this paragraph as having carried on that part of its trade as a separate trade.
- (3) Where activities fall to be treated for the purposes of this paragraph as a separate trade, such apportionments of receipts, expenses, assets and liabilities shall be made for the purposes of the 2001 Act as may be just.

Commencement Information

18 Sch. 9 para. 8 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

Capital allowances: transfer of plant or machinery

- 9 (1) This paragraph applies where—
- (a) there is a transfer of property to the NDA or a subsidiary of the NDA in accordance with a section 39 scheme;
 - (b) the property is plant or machinery; and
 - (c) paragraph 7 does not apply in relation to the transfer of the plant or machinery.
- (2) For the purposes of Part 2 of the 2001 Act (capital allowances for plant and machinery), the NDA or its subsidiary is to be treated—
- (a) as having incurred capital expenditure on the provision of the plant or machinery at the time of the transfer; and
 - (b) as having owned the plant or machinery as a result of having incurred that expenditure.
- (3) The amount of that expenditure is to be treated as being the book value of the plant or machinery.
- (4) For the purposes of the application of section 61 of that Act in relation to the transferor the disposal value of the plant or machinery is to be treated as being the book value of the plant or machinery.
- (5) The references in this paragraph to the book value of the plant or machinery are references to the amount which, in accordance with generally accepted accounting practice (within the meaning of the Tax Acts)—
- (a) was recognised as its value in the accounts of the transferor at the time of the transfer; or
 - (b) should have been so recognised at that time.

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- (6) Expressions used in this paragraph and in Part 2 of the 2001 Act have the same meanings in this paragraph as in that Part.

Commencement Information

I9 Sch. 9 para. 9 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

Capital allowances: transfer not to be transaction between connected persons

- 10 For the purposes of Part 2 of the 2001 Act references in that Part to a transaction (however described) between connected persons (within the meaning of [^{F3}section 1122 of the Corporation Tax Act 2010]) are not to include references to a transfer of anything in accordance with a section 39 scheme to the NDA or a subsidiary of the NDA.

Textual Amendments

F3 Words in Sch. 9 para. 10 substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), Sch. 1 para. 438(3) (with Sch. 2)

Commencement Information

I10 Sch. 9 para. 10 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

Continuity in relation to loan relationships

- 11 (1) This paragraph applies if, in consequence of a section 39 scheme, the NDA or a subsidiary of the NDA replaces a person as a party to a loan relationship.
- (2) [^{F4}Part 5 of the Corporation Tax Act 2009] is to have effect in relation to the time when the transfer takes effect and any later time as if—
- (a) the NDA or its subsidiary had been a party to the loan relationship at the time when the transferor became a party to it and at all times since that time; and
 - (b) the loan relationship to which the NDA or its subsidiary is a party after the time when the transfer takes effect is the same loan relationship as that to which, by virtue of paragraph (a), it is treated as having been a party before that time.
- (3) Expressions used in this paragraph and in [^{F5}Part 5 of the Corporation Tax Act 2009] have the same meanings in this paragraph as in [^{F5}that Part].

Textual Amendments

F4 Words in Sch. 9 para. 11(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 586(2)(a) (with Sch. 2 Pts. 1, 2)

F5 Words in Sch. 9 para. 11(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 586(2)(b) (with Sch. 2 Pts. 1, 2)

Commencement Information

I11 Sch. 9 para. 11 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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Continuity in relation to derivative contracts

- 12 (1) This paragraph applies if, in consequence of a section 39 scheme, the NDA or a subsidiary of the NDA replaces a person as a party to a derivative contract.
- (2) [^{F6}Part 7 of the Corporation Tax Act 2009] is to have effect in relation to the time when the transfer takes effect and any later time as if—
- (a) the NDA or its subsidiary had been a party to the derivative contract at the time when the transferor became a party to it and at all times since that time; and
 - (b) the derivative contract to which the NDA or its subsidiary is a party after the time when the transfer takes effect is the same derivative contract as that to which, by virtue of paragraph (a), it is treated as having been a party before that time.
- (3) Expressions used in this paragraph and in [^{F7}Part 7 of the Corporation Tax Act 2009] have the same meanings in this paragraph as in [^{F8}that Part].

Textual Amendments

- F6** Words in Sch. 9 para. 12(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 586(3)(a) (with Sch. 2 Pts. 1, 2)
- F7** Words in Sch. 9 para. 12(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 586(3)(b)(i) (with Sch. 2 Pts. 1, 2)
- F8** Words in Sch. 9 para. 12(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 586(3)(b)(ii) (with Sch. 2 Pts. 1, 2)

Commencement Information

- I12** Sch. 9 para. 12 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

Continuity in relation to transfer of intangible assets

- 13 (1) Where—
- (a) property is transferred in accordance with a section 39 scheme to the NDA or a subsidiary of the NDA, and
 - (b) the property transferred includes a chargeable intangible asset of the transferor,
- the transfer of that asset is to be treated for the purposes of Schedule 29 to the Finance Act 2002 as a tax neutral transfer.
- (2) Where, in the case of a transfer in accordance with a section 39 scheme of any property to the NDA or a subsidiary of the NDA—
- (a) the property transferred includes an asset which is not a chargeable intangible asset of the transferor, but
 - (b) that asset falls to be treated after the transfer as a chargeable intangible asset of the NDA or its subsidiary,
- that asset shall be treated as acquired by the NDA or its subsidiary for an amount equal to the amount of the consideration determined for the purposes of paragraph 3(2) of this Schedule.
- (3) Expressions used in this paragraph and in Schedule 29 to the Finance Act 2002 have the same meanings in this paragraph as in that Schedule.

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Commencement Information

I13 Sch. 9 para. 13 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

Chargeable intangible assets: degrouping charges

- 14 (1) This paragraph applies if a company (“the degrouped company”)—
- (a) acquired an intangible fixed asset from another company at a time when both were members of the same group of companies (“the old group”); and
 - (b) ceases by virtue of a transfer to the NDA or a subsidiary of the NDA in accordance with a section 39 scheme to be a member of the old group.
- (2) Paragraph 58 of Schedule 29 to the Finance Act 2002 (company ceasing to be member of group) is not to treat the degrouped company as having, by virtue of the transfer, sold and immediately reacquired the asset.
- (3) Where sub-paragraph (2) has applied to an asset, paragraph 58 of Schedule 29 to the Finance Act 2002 (c. 23) is to have effect on and after the first subsequent occasion on which the degrouped company ceases to be a member of a group of companies (“the new group”) as if—
- (a) the degrouped company, and
 - (b) the company from which it acquired the asset,
- had been members of the new group at the time of acquisition.
- (4) Expressions used in this paragraph and in paragraph 58 of Schedule 29 to the Finance Act 2002 have the same meanings in this paragraph as in that paragraph.

Commencement Information

I14 Sch. 9 para. 14 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

Computation of profits and losses in respect of transfer of trade

- 15 (1) This paragraph applies where, in consequence of a section 39 scheme—
- (a) a BNFL company ceases to carry on a trade or a part of a trade; and
 - (b) an NDA group member begins to carry on the trade or that part of it.
- (2) For the purpose of computing, in relation to the time when the scheme comes into force and subsequent times, the relevant trading profits or losses of the BNFL company and the NDA group member—
- (a) the trade or part is to be treated as having been a separate trade at the time of its commencement and as having been carried on by the NDA group member at all times since its commencement as a separate trade; and
 - (b) the trade carried on by the NDA group member after the time when the section 39 scheme comes into force is to be treated as the same trade as that which it is treated, by virtue of paragraph (a), as having carried on as a separate trade before that time.
- (3) This paragraph is subject to paragraph 11.
- (4) In this paragraph—

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“BNFL company” means BNFL or a subsidiary of BNFL;

“NDA group member” means the NDA or a subsidiary of the NDA;

“relevant trading profits and losses” means profits or losses [^{F9}under Part 3 of the Corporation Tax Act 2009 in respect of the trade or part of a trade in question for periods in which the trade was carried on wholly or partly in the United Kingdom.]

Textual Amendments

- F9** Words in [Sch. 9 para. 15\(4\)](#) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 586\(4\)](#) (with [Sch. 2 Pts. 1, 2](#))

Commencement Information

- I15** [Sch. 9 para. 15](#) in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 137(3)(c)-(e) inserted by [2011 c. 16 s. 117\(b\)](#)
- s. 173(2C) inserted by [2023 c. 52 Sch. 14 para. 10](#)
- Sch. 22 para. 4(1A) inserted by [2023 c. 52 Sch. 14 para. 11\(2\)\(b\)](#)