Finance (No. 2) Act 2005

2005 CHAPTER 22

PART 4

EUROPEAN COMPANY STATUTE

51 Chargeable gains

(1) After section 140D of TCGA 1992 (transfer of non-UK trade) insert—

"Formation of SE by merger

140E Merger leaving assets within UK tax charge

(1) This section applies where—

(a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea),

(b) each merging company is resident in a member State,

(c) the merging companies are not all resident in the same State, and

(d) section 139 does not apply to any qualifying transferred assets.

(2) Where this section applies, qualifying transferred assets shall be treated for the purposes of corporation tax on chargeable gains as if acquired by the SE for a consideration resulting in neither gain nor loss for the transferor.

(3) For the purposes of subsections (1) and (2) an asset is a qualifying transferred asset if—

(a) it is transferred to the SE as part of the process of the merger forming it, and

(b) subsections (4) and (5) are satisfied in respect of it.

(4) This subsection is satisfied in respect of a transferred asset if—

(a) the transferor is resident in the United Kingdom at the time of the transfer, or

(b) any gain that would have accrued to the transferor, had it disposed of the asset immediately before the time of the transfer, would have been a chargeable gain forming part of the transferor's chargeable profits in accordance with section 10B.

(5) This subsection is satisfied in respect of a transferred asset if—

(a) the transferee SE is resident in the United Kingdom on formation, or

(b) any gain that would accrue to the transferee SE were it to dispose of the asset immediately after the transfer would be a chargeable gain forming part of the SE's chargeable profits in accordance with section 10B.

(6) For the purposes of this section a company is resident in a member State if—

(a) it is within a charge to tax under the law of the State as being resident for that purpose, and

(b) it is not regarded, for the purposes of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.

(7) This section does not apply to the formation of an SE by merger if—

(a) it is not effected for bona fide commercial reasons, or

(b) it forms part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax;

and section 138 (clearance in advance) shall apply to this subsection as it applies to section 137 (with any necessary modifications).

140F Merger not leaving assets within UK tax charge

(1) This section applies where—

(a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea),

(b) each merging company is resident in a member State,

(c) the merging companies are not all resident in the same State,

(d) in the course of the merger a company resident in the United Kingdom ("company A") transfers to a company resident in another member State ("company B") all assets and liabilities relating to a business which company A carried on in a member State other than the United Kingdom through a permanent establishment, and

(e) the aggregate of the chargeable gains accruing to company A on the transfer exceeds the aggregate of any allowable losses so accruing.

(2) Where this section applies, for the purposes of this Act—

(a) the allowable losses accruing to company A on the transfer shall be set off against the chargeable gains so accruing, and

(b) the transfer shall be treated as giving rise to a single chargeable gain equal to the aggregate of those gains after deducting the aggregate of those losses.

(3) Where this section applies, section 815A of the Taxes Act shall also apply.

(4) Subsections (6) and (7) of section 140E apply for the purposes of this section as they apply for the purposes of that section.

140G Treatment of securities issued on merger

(1) This section applies where—

(a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea),

(b) each merging company is resident in a member State,

(c) the merging companies are not all resident in the same State, and

(d) the merger does not constitute or form part of a scheme of reconstruction within the meaning of section 136.

(2) Where this section applies, the merger shall be treated for the purposes of section 136 as if it were a scheme of reconstruction.

(3) Where section 136 applies by virtue of subsection (2) above section 136(6) (and section 137) shall not apply.

(4) Subsections (6) and (7) of section 140E apply for the purposes of this section as they apply for the purposes of that section."

(2) Subsection (1) shall have effect in relation to the formation of an SE which occurs on or after 1st April 2005.

52 Intangible fixed assets

(1) After paragraph 85 of Schedule 29 to FA 2002 (intangible fixed assets: gains and losses: transfer of trade) insert—

"Formation of SE by merger

85A (1) This paragraph applies where—

(a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea),

(b) each merging company is resident in a member State,

(c) the merging companies are not all resident in the same State, and

(d) paragraph 84 above does not apply to any qualifying transferred assets.

(2) Where this paragraph applies a transfer of qualifying transferred assets is treated for the purposes of this Schedule as tax-neutral (see paragraph 140).

(3) For the purposes of sub-paragraphs (1) and (2) an asset is a qualifying transferred asset if—

(a) it is transferred as part of the process of the merger,

(b) it is a chargeable intangible asset in relation to the transferor immediately before the transfer, and

(c) it is a chargeable intangible asset in relation to the transferee immediately after the transfer.

(4) Sub-paragraph (2) shall apply in relation to the formation of an SE by merger only if—

(a) it is effected for bona fide commercial reasons, and

(b) it does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.

(5) Paragraph 84(6) (and therefore paragraph 88) shall apply, with any necessary modifications, in relation to sub-paragraph (4) above as in relation to paragraph 84(5).

(6) For the purposes of this paragraph a company is resident in a member State if—

(a) it is within a charge to tax under the law of the State as being resident for that purpose, and

(b) it is not regarded, for the purposes of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State."

(2) Subsection (1) shall have effect in relation to the formation of an SE which occurs on or after 1st April 2005.

53 Intangible fixed assets: permanent establishment in another member State

(1) After paragraph 87 of Schedule 29 to FA 2002 (intangible fixed assets: gains and losses: transfer of non-UK trade) insert—

"Formation of SE by merger: transfer of non-UK trade

87A (1) This paragraph applies where—

(a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea),

(b) each merging company is resident in a member State,

(c) the merging companies are not all resident in the same State,

(d) in the course of the merger a company resident in the United Kingdom ("the transferor") transfers to a company resident in another member State ("the transferee") the whole or part of a trade that, immediately before the transfer, the transferor carried on in a member State other than the United Kingdom through a permanent establishment,

(e) the transfer includes the whole of the assets of the transferor used for the purposes of the trade or part,

(f) the transfer includes intangible fixed assets—

(i) that are chargeable intangible assets in relation to the transferor immediately before the transfer, and

(ii) in the case of one or more of which the proceeds of realisation exceed the cost recognised for tax purposes, and

(g) no claim is made under paragraph 86 above in relation to those assets.

(2) Where tax would, but for the Mergers Directive, have been chargeable in the member State in which the permanent establishment is located, Part 18 of the Taxes Act 1988 (double taxation relief), including any arrangements having effect by virtue of section 788 (double taxation agreements), shall have effect as if the amount of tax that would, but for the Mergers Directive, have been charged in respect of the transfer of the chargeable intangible assets, had actually been charged.

(3) In this paragraph "the Mergers Directive" has the same meaning as in paragraph 87.

(4) For the purposes of this paragraph a company is resident in a member State if—

(a) it is within a charge to tax under the law of the State as being resident for that purpose, and

(b) it is not regarded, for the purposes of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.

(5) This paragraph does not apply to the formation of an SE by merger if—

(a) it is not effected for bona fide commercial reasons, or

(b) it forms part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.

(6) Sub-paragraph (5) shall not affect the operation of this paragraph in any case where, before the transfer, Her Majesty's Revenue and Customs have, on the application of the transferor, notified the transferor that they are satisfied that the merger will be effected for bona fide commercial reasons and will not form part of any such scheme or arrangements as are mentioned in sub-paragraph (5)(b).

(7) An application under sub-paragraph (6) must be made in accordance with paragraph 88."

(2) Subsection (1) shall have effect in relation to the formation of an SE which occurs on or after 1st April 2005.

54 Loan relationships

(1) After paragraph 12A of Schedule 9 to FA 1996 (loan relationships: gains and losses: continuity of treatment for groups) insert—

"Formation of SE by merger

12B (1) This paragraph applies where—

(a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea),

(b) each merging company is resident in a member State,

(c) the merging companies are not all resident in the same State, and

(d) either—

(i) immediately after formation the SE is resident in the United Kingdom and within the charge to corporation tax in accordance with section 6 of the Taxes Act 1988, or

(ii) immediately after formation the SE is not resident in the United Kingdom but is within the charge to corporation tax in accordance with section 11 of the Taxes Act 1988.

(2) Where this paragraph applies, the transfer in the course of the merger of an asset or liability which represents a loan relationship shall be disregarded except—

(a) for the purpose of determining the debits or credits to be brought into account in respect of exchange gains or losses and identifying the company which is to bring them into account, and

(b) for the purpose of identifying the company in whose case a debit or credit which does not relate to the transfer is to be brought into account.

(3) Where this paragraph applies, the transferor and the transferee companies of an asset or liability which represents a loan relationship shall be deemed, except for the purposes specified in sub-paragraph (2)(a) and (b), to be the same company.

(4) Paragraph 12(2A) shall have effect (with any necessary modifications) in relation to this paragraph as in relation to paragraph 12.

(5) Sub-paragraphs (2) and (3) shall apply in relation to the formation of an SE by merger only if—

(a) it is effected for bona fide commercial reasons, and

(b) it does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.

(6) But sub-paragraph (5) shall not have the effect of preventing sub-paragraphs (2) and (3) from applying if before the merger Her Majesty's Revenue and Customs have on the application of the merging companies notified them that Her Majesty's Revenue and Customs are satisfied that sub-paragraph (5) will not have that effect.

(7) For the purposes of this paragraph a company is resident in a member State if—

(a) it is within a charge to tax under the law of the State as being resident for that purpose, and

(b) it is not regarded, for the purposes of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State."

(2) Subsection (1) shall have effect in relation to the formation of an SE which occurs on or after 1st April 2005.

55 Derivative contracts

(1) After paragraph 30A of Schedule 26 to FA 2002 (derivative contracts: profits: groups) insert—

"Formation of SE by merger

30B (1) This paragraph applies where—

(a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea),

(b) each merging company is resident in a member State,

(c) the merging companies are not all resident in the same State, and

(d) either—

(i) immediately after formation the SE is resident in the United Kingdom and within the charge to corporation tax in accordance with section 6 of the Taxes Act 1988, or

(ii) immediately after formation the SE is not resident in the United Kingdom but is within the charge to corporation tax in accordance with section 11 of the Taxes Act 1988.

(2) Where this paragraph applies, the transfer in the course of the merger of rights or liabilities under a derivative contract shall be disregarded except—

(a) for the purpose of determining the debits or credits to be brought into account in respect of exchange gains or losses and identifying the company which is to bring them into account, and

(b) for the purpose of identifying the company in whose case a debit or credit which does not relate to the transfer is to be brought into account.

(3) Where this paragraph applies, the transferor and the transferee companies of a right or liability under a derivative contract shall be deemed, except for the purposes specified in sub-paragraph (2)(a) and (b), to be the same company.

(4) Paragraph 30 shall apply, with any necessary modifications, in relation to this paragraph as in relation to paragraph 28.

(5) Sub-paragraphs (2) and (3) shall apply in relation to a merger only if—

(a) it is effected for bona fide commercial reasons, and

(b) it does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.

(6) But sub-paragraph (5) shall not have the effect of preventing sub-paragraphs (2) and (3) from applying if before the merger Her Majesty's Revenue and Customs have on the application of the merging companies notified them that Her Majesty's Revenue and Customs are satisfied that sub-paragraph (5) will not have that effect.

(7) For the purposes of this paragraph a company is resident in a member State if—

(a) it is within a charge to tax under the law of the State as being resident for that purpose, and

(b) it is not regarded, for the purposes of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State."

(2) Subsection (1) shall have effect in relation to the formation of an SE which occurs on or after 1st April 2005.

56 Capital allowances

(1) After section 561 of CAA 2001 (transfer of UK trade to company in another member State) insert—

"**561A Transfer during formation of SE by merger**

(1) This section applies to the transfer of a qualifying asset as part of the process of a merger to which section 140E of TCGA 1992 (formation of SE by merger) applies (or would apply but for section 140E(1)(d)).

(2) Where this section applies to a transfer—

(a) the transfer does not give rise to any allowance or charge under this Act,

(b) anything done to or by the transferor in relation to assets transferred is to be treated after the transfer as having been done to or by the transferee (with any necessary apportionment of expenditure being made in a reasonable manner), and

(c) section 343 of ICTA (company reconstruction without change of ownership) shall not apply.

(3) For the purposes of subsection (1) an asset is a "qualifying asset" if—

(a) it is transferred to the SE as part of the merger forming it, and

(b) subsections (4) and (5) are satisfied in respect of it.

(4) This subsection is satisfied in respect of an asset if—

(a) the transferor is resident in the United Kingdom at the time of the transfer, or

(b) the asset is an asset of a permanent establishment in the United Kingdom of the transferor.

(5) This subsection is satisfied in respect of an asset if—

(a) the transferee SE is resident in the United Kingdom on formation, or

(b) the asset is an asset of a permanent establishment in the United Kingdom of the transferee SE on its formation."

(2) Subsection (1) shall have effect in relation to a transfer made on or after 1st April 2005.

57 Stamp duty reserve tax

(1) At the end of section 99(4) of FA 1986 (stamp duty reserve tax: interpretation: chargeable securities) add—

", or

(d) they are issued or raised by an SE (whether or not in the course of its formation in accordance with Article 2 of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea)) and, at the time when it falls to be determined whether the securities are chargeable securities, the SE has its registered office in the United Kingdom.

(4A) "Chargeable securities" does not include securities falling within paragraph (a), (b) or (c) of subsection (3) above if—

(a) they are securities issued or raised by an SE (whether or not in the course of its formation in accordance with Article 2 of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea)), and

(b) at the time when it falls to be determined whether the securities are chargeable securities, the SE has its registered office outside the United Kingdom."

(2) Subsection (1) shall have effect for the purposes of determining, in relation to anything occurring on or after 1st April 2005, whether securities (whenever issued or raised) are chargeable securities for the purposes of Part 4 of FA 1986.

58 Bearer instruments: stamp duty and stamp duty reserve tax

(1) In section 90(3C)(a) of FA 1986 (stamp duty reserve tax: bearer instruments) after "United Kingdom" insert "(other than an SE which has its registered office outside the United Kingdom following a transfer in accordance with Article 8 of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea))".

(2) In section 90(3E)(a) of FA 1986 (stamp duty reserve tax: bearer instruments) after "United Kingdom" insert "(other than an SE which has its registered office outside the United Kingdom following a transfer in accordance with Article 8 of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea))".

(3) In paragraph 11 of Schedule 15 to FA 1999 (bearer instruments) for the definition of "UK company" substitute—

""UK company" means—

(a) a company that is formed or established in the United Kingdom (other than an SE which has its registered office outside the United Kingdom following a transfer in accordance with Article 8 of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea)), or

(b) an SE which has its registered office in the United Kingdom following a transfer in accordance with Article 8 of that Regulation;".

(4) This section shall have effect for the purposes of determining whether or not stamp duty or stamp duty reserve tax is chargeable in respect of anything done on or after 1st April 2005.

59 Consequential amendments

(1) In section 815A(1) of ICTA (transfer of a non-UK trade) after "section 140C" insert "or 140F".

(2) In section 35(3)(d)(i) of TCGA 1992 (re-basing to 1982, etc) after "140A," insert "140E,".

(3) In section 140A of TCGA 1992 (transfer of UK trade)—

(a) in subsection (1)(b) for "securities" substitute "shares or debentures", and

(b) in subsection (7) omit the definition of "securities".

(4) In section 140C of TCGA 1992 (transfer of non-UK trade)—

(a) in subsection (1)(c) for "securities" substitute "shares or debentures", and

(b) in subsection (9) omit the definition of "securities".

(5) In paragraph 88(1) and (5) of Schedule 29 to FA 2002 (intangible fixed assets: gains and losses: transferred assets: application for clearance) after "85(5)," insert "85A(5), 87A(6),".

(6) In paragraph 127 of that Schedule (acquired assets to be treated as existing assets) after sub-paragraph (1)(b)(ii) insert—

", or

(iii) section 140E of that Act (transfer on formation of SE by merger),".

(7) Subsections (3) and (4) shall have effect in relation to an issue effected on or after 1st April 2005.

60 Residence

(1) After section 66 of FA 1988 (company residence) insert—

"**66A Residence of SE**

(1) This section applies to an SE which transfers its registered office to the United Kingdom (in accordance with Article 8 of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea)).

(2) Upon registration in the United Kingdom the SE shall be regarded for the purposes of the Taxes Acts as resident in the United Kingdom; and accordingly, if a different place of residence is given by any rule of law, that place shall not be taken into account for those purposes.

(3) The SE shall not cease to be regarded as resident in the United Kingdom by reason only of the subsequent transfer from the United Kingdom of its registered office.

(4) In this section "the Taxes Acts" has the same meaning as in the Taxes Management Act 1970."

(2) In section 249(3) of FA 1994 (certain companies to be treated as non-resident) after "resident there)" insert ", by virtue of section 66A of that Act (residence of SE)".

(3) Subsection (1) shall have effect in relation to the transfer of a registered office which occurs on or after 1st April 2005.

61 Continuity for transitional purposes

(1) If at any time a company ceases to be resident in the United Kingdom in the course of the formation of an SE by merger (whether or not the company continues to exist after the formation of the SE) the provision specified in subsection (3) shall apply after that time, but in relation to liabilities accruing and matters arising before that time—

(a) as if the company were still resident in the United Kingdom, and

(b) where the company has ceased to exist, as if the SE were the company.

(2) If at any time an SE transfers its registered office from the United Kingdom and ceases to be resident in the United Kingdom, the provision specified in subsection (3) shall apply after that time, but in relation to liabilities accruing and matters arising before that time, as if the SE were still resident in the United Kingdom.

(3) The provision mentioned in subsections (1) and (2) is Schedule 18 to FA 1998 (tax returns, assessments, etc).

62 Groups

(1) After section 170(10) of TCGA 1992 (groups: merger, etc) insert—

"(10A) Where the principal company of a group (Group 1)—

(a) becomes an SE by reason of being the acquiring company in the formation of an SE by merger by acquisition (in accordance with Articles 2(1), 17(2)(a) and 29(1) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea)),

(b) becomes a subsidiary of a holding SE (formed in accordance with Article 2(2) of that Regulation), or

(c) is transformed into an SE (in accordance with Article 2(4) of that Regulation),

Group 1 and any group of which the SE is a member on formation shall be regarded as the same; and the question whether or not a company has ceased to be a member of a group shall be determined accordingly."

(2) Subsection (1) shall have effect in relation to the formation of an SE (including its formation by transformation) which occurs on or after 1st April 2005.

63 Groups: intangible fixed assets

(1) After paragraph 51 of Schedule 29 to FA 2002 (groups: continuity) insert—

"51A For the purposes of this Schedule where the principal company of a group (Group 1)—

(a) becomes an SE by reason of being the acquiring company in the formation of an SE by merger by acquisition (in accordance with Articles 2(1), 17(2)(a) and 29(1) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea)),

(b) becomes a subsidiary of a holding SE (formed in accordance with Article 2(2) of that Regulation), or

(c) is transformed into an SE (in accordance with Article 2(4) of that Regulation),

Group 1 and any group of which the SE is a member on formation shall be regarded as the same; and the question whether or not a company has ceased to be a member of a group shall be determined accordingly."

(2) Subsection (1) shall have effect in relation to the formation of an SE (including its formation by transformation) which occurs on or after 1st April 2005.

64 Held-over gains

(1) In section 116(11) of TCGA 1992 (shares: reorganisation, etc) after "140A," insert "140E,".

(2) After section 140(6A) of that Act (postponement of charge on transfer of assets to foreign company) insert—

"(6B) If, as part of the process of a merger forming an SE in circumstances in which section 140E applies, securities are transferred to the SE by a transferor company—

(a) the transfer to the SE shall be disregarded for the purposes of subsection (4), and

(b) the SE shall be treated as if it were the transferor company in relation to—

(i) any subsequent disposal of the securities, and

(ii) any subsequent disposal by the transferee company of assets to which subsection (5) applies."

(3) After section 154(2) of that Act (held over gains: depreciating assets) insert—

"(2A) If, as part of the process of a merger forming an SE in circumstances in which section 140E applies, asset No 2 or shares in a company which holds asset No 2 are transferred to the SE, the transfer to the SE shall be disregarded for the purposes of subsection (2), and—

(a) if the SE holds asset No 2, it shall be treated for the purposes of subsection (2), in relation to asset No 2, as if it were the claimant, or

(b) if the SE holds shares in the company which holds asset No 2, section 175 shall apply in relation to the group of which the SE is a member as if it were the same group as any group of which the claimant was a member before the formation of the SE.

(2B) If, as part of the process of a merger forming an SE in circumstances in which section 140E applies, the SE becomes a member (whether or not as the principal company) of a group of which the claimant is also a member, for the purposes of subsection (2) section 175 shall apply in relation to the trade carried on by the claimant as if the group of which the SE is a member were the same group as the group of which the claimant was a member before the formation of the SE."

(4) After section 179(1A) of that Act (company ceasing to be member of group) insert—

"(1B) Where, as part of the process of a merger to form an SE in circumstances in which section 140E applies, a company which is a member of a group ("Group 1") ceases to exist and in consequence of that cessation—

(a) assets are transferred to the SE, or

(b) shares in one or more companies which were also members of the group are transferred to the SE,

a company which has ceased to exist, or the shares in which have been transferred to the SE, shall not be treated for the purposes of this section as having left Group 1.

(1C) If subsection (1B) applies in relation to a company then for the purposes of this section—

(a) the SE and a company which has ceased to exist in consequence of the merger to form the SE shall be treated as the same entity, and

(b) if the SE is a member of a group ("Group 2") following its formation (whether or not as the principal company of the group) a company which was a member of Group 1 and became a member of Group 2 in consequence of the formation of the SE shall be treated, for the purposes of this section, as if Group 1 and Group 2 were the same."

(5) This section shall have effect in relation to the formation of an SE in accordance with Article 2 of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea) which occurs on or after 1st April 2005.

65 Restrictions on set-off of pre-entry losses

(1) Schedule 7A to TCGA 1992 (restrictions on set-off of pre-entry losses) shall be amended as follows.

(2) After paragraph 1(3A)(a) insert—

"(aa) in a case in which (whether or not paragraph (a)(i) also applies)—

(i) the company is an SE resident in the United Kingdom, and

(ii) the asset was transferred to the SE as part of the process of its formation by the merger by acquisition of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea),

are references to the asset becoming a chargeable asset in relation to the SE or, if at the time of the formation of the SE the asset was a chargeable asset in relation to a company which ceased to exist as part of the process of the formation of the SE, to the asset becoming a chargeable asset in relation to that company;".

(3) In the definition of "chargeable asset" in paragraph 1(3A) after "section 10B" insert "(or, if the company is an SE, by reason of the asset having been transferred to the SE on its formation)".

(4) In paragraph 1(6)(a) after "subsection (10)" insert "or (10A)".

(5) In paragraph 9(6) after "subsection (10)" insert "or (10A)".

(6) This section shall have effect in relation to the formation of an SE which occurs on or after 1st April 2005.