



Finance (No. 2) Act 2005

2005 CHAPTER 22

PART 4

EUROPEAN COMPANY STATUTE

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

Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 2005, Section 53. (See end of Document for details)

- (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.

Changes to legislation:

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