

CROSSRAIL ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SCHEDULES

Schedule 13 – Transfer schemes : tax provisions (tax provisions relating to transfer schemes)

263. This Schedule makes provision relating to tax consequences that could otherwise arise in relation to the transfers of property, rights and liabilities under transfer schemes made under Schedule 12. Broadly, it ensures that inappropriate tax charges and reliefs are not triggered solely as a result of a transfer scheme and provides continuity of tax treatment, where appropriate. References below to “transferors” and “transferees” are with reference to transfer schemes made under Schedule 12.
264. *Paragraph 1* defines the meaning of “public body” for the purposes of the Schedule and adopts the Stamp Duty Land Tax definition in section 66 of the Finance Act 2003.
265. *Paragraph 2* defines the meaning of “taxable public body” and “exempt public body” for the purposes of the Schedule.
266. *Paragraph 3* contains supplementary provision on interpretation.
267. *Part 2 of the Schedule (Paragraphs 4 – 16)* contains provisions about the corporation tax treatment of taxable public bodies relating to transfers between taxable public bodies of property, rights and liabilities which happen under transfer schemes.
268. *Paragraph 4* defines the meaning of a “relevant transfer” for the purposes of Part 2.
269. *Paragraph 5* provides for continuity in the treatment of the computation of profits and losses of a trade where the transferor ceases to carry on that trade and the transferee begins to carry on the trade, or part of it.
270. *Paragraph 6* applies where trading stock of the transferor is transferred to the transferee but the transferee does not succeed to the transferor’s trade, or part of it. For corporation tax purposes the stock is treated as being disposed of for an amount that would result in no profit or loss being brought into account for the transferor.
271. *Paragraph 7* provides for continuity of treatment for capital allowances where the transferor ceases to carry on a trade and the transferee begins to carry on that trade.
272. *Paragraph 8* provides that where the trade transferred is carried on as part of the trade of the successor, or the successor carries on part of the trade, that part is to be treated as a separate trade for the purposes of paragraph 7.
273. *Paragraph 9* applies to transfers of plant and machinery where these are not transferred with a trade. This paragraph ensures that the disposal value to be brought into account for the transferor, and the amount of capital expenditure regarded as incurred by the transferee, is the value of the plant and machinery, or fixture, specified in, or determined in accordance with, the transfer scheme.

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274. *Paragraph 10* provides that a transfer of an industrial building will not be treated as a sale in order that there is continuity of treatment for industrial building allowance.
275. *Paragraph 11* determines that for capital gains purposes, the disposal value and acquisition cost of an asset transferred is the amount that would result in no gain or loss accruing to the transferor.
276. *Paragraph 12* ensures continuity of treatment where a depreciating asset is transferred and a held-over gain would otherwise crystallise.
277. *Paragraph 13* ensures continuity of treatment for transfers of intangible assets by treating a relevant transfer of a chargeable intangible asset as a “tax-neutral transfer” and preserving the status of an intangible asset that was an “existing asset” in the hands of the transferor.
278. *Paragraph 14* ensures continuity of treatment for loan relationships in relation to a relevant transfer by treating the transferor and transferee as members of the same group at the time of the transfer.
279. *Paragraph 15* ensures continuity of treatment for derivative contracts in relation to a relevant transfer by treating the transferor and transferee as members of the same group at the time of the transfer.
280. *Paragraph 16* ensures that no deemed charge arises for the transfer of certain leased assets and provides continuity of treatment for certain leased assets.
281. *Part 3 of the Schedule (paragraphs 17- 25)* contains provisions about the corporation tax treatment of taxable public bodies relating to transfers from taxable public bodies to exempt public bodies of property, rights and liabilities under transfer schemes.
282. *Paragraph 17* defines the meaning of a “relevant transfer” for the purposes of Part 3.
283. *Paragraph 18* ensures that, for the purpose of computing the profits of the transferor’s trade, the disposal value of any trading stock transferred is the actual consideration, if any, given to the transferor, or a person connected with the transferor.
284. *Paragraph 19* determines the disposal value of plant and machinery for capital allowance purposes. The disposal value is the capital sum, if any, received by the transferor, or a person connected with the transferor.
285. *Paragraph 20* determines the disposal value of a fixture for capital allowance purposes. The disposal value is that portion of the capital sum, if any, received by the transferor or a person connected with the transferor, that would be treated as expenditure incurred by the transferee on the fixture if the transferee was entitled to an allowance.
286. *Paragraph 21* determines that the transfer of an industrial building is to be treated as a sale for industrial building allowance purposes and that the sale proceeds are the capital sum, if any, received by the transferor, or a person connected with the transferor. This paragraph is subject to section 36 of the Finance Act 2007. In practice this means that a balancing adjustment would only be computed where qualifying enterprise zone expenditure had been allowed in respect of the building transferred.
287. *Paragraph 22* determines that the disposal value, for capital gains purposes, of an asset transferred is the amount that would result in no gain or loss accruing to the transferor.
288. *Paragraph 23* provides that the transfer of a chargeable intangible asset should not be treated as involving any realisation of the asset by the transferor with the effect that no gain or loss would arise for corporation tax purposes.
289. *Paragraph 24* provides that no credit or debit shall be brought into account for a relevant transfer for the purposes of the loan relationships and derivative contracts rules with the effect that no profit or loss would arise for corporation tax purposes.

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290. *Paragraph 25* ensures that no deemed charge arises for the transfer of certain leased assets.
291. *Part 4 of the Schedule (paragraphs 26 – 28)* contains provisions about the corporation tax treatment of taxable public bodies relating to transfers from exempt public bodies to taxable public bodies of property, rights and liabilities under transfer schemes.
292. *Paragraph 26* defines the meaning of a “relevant transfer” for the purposes of Part 4.
293. *Paragraph 27* deems the transferee to have incurred capital expenditure on plant and machinery, or fixtures, for capital allowances purposes. It also determines that the amount of the capital expenditure regarded as incurred by the transferee is the value specified in, or determined in accordance with, the transfer scheme.
294. *Paragraph 28* determines the amount that is to be taken as the residue of qualifying expenditure for industrial buildings allowance purposes.
295. *Part 5 of the Schedule (paragraphs 29 – 32)* contains other provisions relating to transfers between public bodies of property, rights and liabilities under transfer schemes.
296. *Paragraph 29* defines the meaning of a “relevant transfer” for the purposes of Part 5.
297. *Paragraph 30* ensures that a relevant transfer of all of the issued share capital of a company would not trigger restrictions in sections 768 – 768E of the Income and Corporation Taxes Act 1988 which could otherwise apply on a change of ownership of a subsidiary company.
298. *Paragraph 31* ensures that a degrouping charge in section 179 of the Taxation of Chargeable Gains Act 1992 which could otherwise apply where a company ceases to be a member of a group, shall not apply where that company becomes a member of another group as the result of a transfer.
299. *Paragraph 32* ensures that no stamp duty liability arises on a transfer scheme where the transferor and each transferee is a public body, or on an instrument made for the purposes of, or in connection with, a transfer scheme where the Secretary of State certifies this to be the case.
300. *Part 6 of the Schedule (paragraphs 33 – 40)* contains provisions relating to transfers of property, rights and liabilities under transfer schemes involving persons other than a public body.
301. *Paragraph 33* defines the meaning of a “relevant transfer” for the purposes of Part 6.
302. *Paragraph 34* provides that for the purpose of computing the profits of the transferor’s trade the value of trading stock transferred is the actual consideration, if any, given to the transferor, or a person connected with the transferor. Where the trading stock immediately becomes trading stock of the transferee the same value is to be taken into account in computing the profits of the transferee’s trade. Similarly where the transferee acquires the stock other than as trading stock of its trade the transferee is treated as giving consideration for the stock equal to the actual consideration given, if any.
303. *Paragraph 35* determines the disposal value of plant and machinery for capital allowance purposes. The disposal value is the capital sum, if any, received by the transferor, or a person connected with the transferor.
304. *Paragraph 36* determines the disposal value of a fixture for capital allowance purposes. The disposal value is that portion of the capital sum, if any, received by the transferor or a person connected with the transferor, which falls to be treated as expenditure incurred by the transferee on the provision of the fixture (or would be if the transferee was entitled to an allowance).

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305. *Paragraph 37* provides that section 265 of the Capital Allowances Act 2001 shall not apply to a relevant transfer in relation to the transferee. Paragraphs 35 and 36 already override section 265 in the case of the transferor so that the transfer would not be treated as a succession in the case of the transferor. Paragraph 37 makes it clear that this is also the case for the transferee.
306. *Paragraph 38* determines that the transfer of an industrial building is to be treated as a sale for industrial building allowance purposes and that the sale proceeds are the capital sum, if any, received by the transferor, or a person connected with the transferor. This paragraph is subject to section 36 of the Finance Act 2007. In practice this means that a balancing adjustment would only be computed where qualifying enterprise zone expenditure had been allowed in respect of the building transferred.
307. *Paragraph 39* provides that, unless the parties are connected persons, a relevant transfer is not to be treated as made at market value for chargeable gains purposes, and determines that the disposal and acquisition value is the actual consideration given, if any, by the acquirer, or on his behalf, for the asset.
308. *Paragraph 40* ensures that a relevant transfer would not be treated as made at market value for loan relationships purposes.
309. *Part 7 of the Schedule (paragraphs 41 – 46)* contains other provisions relating to transfers of property, rights and liabilities under transfer schemes.
310. *Paragraph 41* ensures that a transfer scheme is not treated as a scheme or arrangement that would trigger value shifting rules in section 30 of the Taxation of Chargeable Gains Act 1992.
311. *Paragraph 42* ensures that the power of the Secretary of State to make a transfer scheme would not constitute “arrangements” within the meaning of section 410 of the Income and Corporation Taxes Act 1988 or “option arrangements” for the purposes of paragraph 5B of Schedule 18 to that Act.
312. *Paragraph 43* provides for the situations where a transfer scheme is modified, or a determination is made or modified under paragraph 9(1)(d) or 27(1)(c), subsequent to the delivery of a company return causing the company’s return to be incorrect. It enables the company to amend its return to correct the error, notwithstanding the normal time limits for doing so, within 12 months of the end of the accounting period in which the change occurred. Where the company does not do so HMRC may make a discovery assessment or determination within 24 months of the end of the accounting period in which the change occurred (notwithstanding any normal time limit).
313. *Paragraph 44* provides for the situation where a transfer scheme is modified subsequent to the delivery of a personal, trustee or partnership return causing the return to be incorrect. It enables the person who is responsible for the return to amend it to correct the error, notwithstanding the normal time limits for doing so, within 12 months of the end of the year of assessment in which the change occurred. In the case of a partnership return it also ensures that HMRC can amend the partners’ returns (notwithstanding any normal time limit). Where a return is not amended HMRC may make appropriate assessments within 24 months of the end of the year of assessment in which the change occurred (notwithstanding any normal time limit).
314. *Paragraph 45* gives the Treasury power to make regulations, subject to negative procedure in the House of Commons, varying the way in which a relevant tax has effect in relation to any property, rights or liabilities transferred in accordance with a transfer scheme or anything done for the purposes of, in relation to, or as a consequence of a transfer. A “relevant tax” for this purpose is income tax, corporation tax, capital gains tax, stamp duty, stamp duty land tax or stamp duty reserve tax. This means that amended, or further amended, tax provision can be provided for transfers under Schedule 12 to the Act, if necessary.

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315. *Paragraph 46* makes a consequential amendment in section 35(3)(d) of the Taxation of Chargeable Gains Act 1992.