



Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

PART 2

DOUBLE TAXATION RELIEF

CHAPTER 3

MISCELLANEOUS PROVISIONS

Cross-border transfers and mergers: chargeable gains

122 Tax treated as chargeable in respect of gains on transfer of non-UK business

- (1) Subsection (3) applies if—
- (a) section 140C or 140F of TCGA 1992 applies, and
 - (b) gains accruing to company A on the transfer would have been chargeable to tax under the law of the host State but for the Mergers Directive.
- (2) In this section—
- “company A”—
 - (a) means the transferor within the meaning given by subsection (1) or (1A) of section 140C of TCGA 1992 if that subsection applies, and
 - (b) has the meaning given by section 140F(2) of TCGA 1992 if it applies,
 - “the host State” means the member State^{F1}... mentioned, in whichever of the transfer subsections applies, as the location in which company A carries on a business or part of a business,
 - “the transfer” means the transfer made by company A that is mentioned in whichever of the transfer subsections applies, and
 - “the transfer subsections” means—

Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Section 122. (See end of Document for details)

- (a) section 140C(1) of TCGA 1992 (transfer, of non-UK business or part, by UK resident “company” to one resident in another member State),
 - (b) section 140C(1A) of TCGA 1992 (transfer, of part of non-UK business, by UK resident “company” to transferees including a “company” resident in another member State), and
 - (c) section 140F(2) of TCGA 1992 (transfer of assets and liabilities of non-UK business, by UK resident “company” or co-operative society to one resident in another member State, as part of genuine merger of two or more “companies” or societies).
- (3) This Part applies, and any double taxation arrangements apply, as if the tax mentioned in subsection (4) were tax payable under the law of the host State.
- (4) That tax is the tax, calculated on the required basis, which but for the Mergers Directive would have been payable under the law of the host State in respect of the gains.
- (5) For the purposes of subsection (4) “the required basis” is that—
- (a) so far as permitted under the law of the host State, any losses arising on the transfer are set against any gains arising on the transfer, and
 - (b) any relief available to company A under the law of the host State has been duly claimed.

Textual Amendments

- F1** Words in s. 122(2) omitted (31.12.2020) by virtue of [The Taxes \(Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/689\)](#), regs. 1, **18(8)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

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