

SCHEDULE 1 **U.K.**

Regulation 3(1)

CROSS-BORDER TRANSFERS OF BUSINESS

Modifications etc. (not altering text)

- C1** Sch. 1 modified (retrospective to 29.11.2007) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2008 \(S.I. 2008/1579\)](#), regs. 1(2), 4

PART 1 **U.K.**

AMENDMENTS OF TCGA 1992

1. TCGA 1992 is amended as follows.

Division of UK business **U.K.**

- 2.—(1) Section 140A (transfer of a UK trade)^{M1} is amended as follows.

- (2) In subsection (1)—

- (a) for “company A” substitute “ the transferor ”,
- (b) for “company B” substitute “ the transferee ”,
- (c) for “qualifying company” substitute “ company ”, and
- (d) for “trade” substitute “ business ”.

- (3) After subsection (1) insert—

“(1A) This section also applies where a company transfers part of its business to one or more companies if—

- (a) the transferor is resident in one member State,
- (b) the part of the transferor's business which is to be transferred is carried on by the transferor in the United Kingdom,
- (c) at least one transferee is resident in a member State other than that in which the transferor is resident,
- (d) the transferor company continues to carry on a business after the transfer,
- (e) the conditions in subsection (1)(c) to (e) are satisfied (for which purpose references to the transferee shall be taken as references to each of the transferees), and
- (f) either of the following conditions is satisfied.

(1B) Condition 1 is that the transfer is made in exchange for the issue of shares in or debentures of each transferee company to the persons holding shares in or debentures of the transferor.

(1C) Condition 2 is that the transfer is not made in exchange for the issue of shares in or debentures of each transferee by reason only, and to the extent only, that a transferee is prevented from complying with Condition 1 by section 658 of the Companies Act 2006^{M2} (rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing the issue of shares or debentures to itself.

(1D) If Condition 2 applies in relation to the whole or part of a transfer, sections 24 and 122 do not apply in relation to the transfer.”.

Changes to legislation: There are currently no known outstanding effects for the The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007, SCHEDULE 1. (See end of Document for details)

- (4) In subsections (2) to (4)—
 - (a) for “company A” substitute “ the transferor ”, and
 - (b) for “company B” substitute “ the transferee (or each of the transferees) ”.
- (5) In subsection (4) for “the two companies” substitute “ the transferor and the transferee (or each of the transferees) ”.
- (6) Omit subsections (5), (6) and (7).
- (7) The heading accordingly becomes “ “Transfer or division of UK business ””.

Marginal Citations

- M1** Sections 140A and 140B were inserted by section 44 of the Finance (No. 2) Act 1992 (c. 48).
M2 2006 c. 46.

- 3. In section 140B (section 140A: anti-avoidance)—
 - (a) for “company A” substitute “ the transferor ”,
 - (b) for “company B” substitute “ the transferee (or each of the transferees) ”, and
 - (c) for “trade” substitute “ business ”.

Division of non-UK business **U.K.**

- 4.—(1) Section 140C (transfer of non-UK trade)^{M3} is amended as follows.
- (2) In subsection (1)—
 - (a) for “company A” substitute “ the transferor ”,
 - (b) for “company B” substitute “ the transferee ”,
 - (c) for “qualifying company” substitute “ company ”, and
 - (d) for “trade” substitute “ business ”.
- (3) After subsection (1) insert—
 - “(1A) This section also applies where a company resident in the United Kingdom transfers part of its business to one or more companies if—
 - (a) the part of the transferor's business which is to be transferred is carried on, immediately before the time of the transfer, by the transferor in a member State other than the United Kingdom through a permanent establishment,
 - (b) at least one transferee is resident in a member State other than the United Kingdom,
 - (c) the transferor company continues to carry on a business after the transfer,
 - (d) the conditions in subsection (1)(b), (d), (e) and (f) are satisfied, and
 - (e) either of the following conditions is satisfied.
 - (1B) Condition 1 is that the transfer is made in exchange for the issue of shares in or debentures of each transferee company to the persons holding shares in or debentures of the transferor.
 - (1C) Condition 2 is that the transfer is not made in exchange for the issue of shares in or debentures of each transferee by reason only, and to the extent only, that a transferee is prevented from complying with Condition 1 by section 658 of the Companies Act 2006 (rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing the issue of shares or debentures to itself.”

- (4) In subsections (3) and (8) for “company A” substitute “ the transferor ”.
- (5) Omit subsections (6), (7) and (9).
- (6) The heading accordingly becomes “ Transfer or division of non-UK business ”.

Marginal Citations

M3 Sections 140C and 140D were inserted by section 45 of the Finance (No. 2) Act 1992.

- 5. In section 140D (section 140C: anti-avoidance)—
 - (a) for “company A” substitute “ the transferor ”, and
 - (b) for “trade” substitute “ business ”.

Treatment of securities issued on transfer of assets **U.K.**

- 6. After section 140D insert—

“140DA Securities issued on division of business

- (1) This section applies where—
 - (a) a transfer of assets to which section 140A(1A) or 140C(1A) ^{M4} applies has taken place,
 - (b) the transferor and the transferee (or each of the transferees) are each resident in a member State,
 - (c) they are not all resident in the same State, and
 - (e) the transfer does not constitute or form part of a scheme of reconstruction within the meaning of section 136.
- (2) Where this section applies, the transfer 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.”.

Marginal Citations

M4 Sections 140A(1A) and 140C(1A) are inserted by paragraph 2 of Schedule 2 to these Regulations.

Held over gains **U.K.**

- 7. After section 140(6A) (postponement of a charge on transfer of assets to non-resident company) ^{M5} insert—

- “(6AA) If securities are transferred by a transferor company as part of the process of the transfer of a business to which section 140A or 140C applies—
- (a) the transfer shall be disregarded for the purposes of subsection (4), and
 - (b) the transferee company 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 of assets to which subsection 5 applies.”.

Changes to legislation: There are currently no known outstanding effects for the *The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007, SCHEDULE 1.* (See end of Document for details)

Marginal Citations

M5 Section 140(6A) was inserted by section 46(1) of the Finance (No. 2) Act 1992.

8. After section 154(2C) (new assets which are depreciating assets) (inserted by paragraph 6 of Schedule 2) insert—

“(2D) Subsections (2A) and (2B) shall apply in relation to the transfer of an asset in circumstances where section 140A applies as they apply in relation to the transfer of an asset on a merger to which section 140E^{M6} applies, and for that purpose—

- (a) references to the merger shall be treated as references to the transfer,
- (b) references to section 140E shall be treated as references to section 140A, and
- (c) references to the transferor and the transferee shall be treated as references to the transferor and the transferee in relation to the asset.”.

Marginal Citations

M6 Section 140E is inserted by paragraph 2 of Schedule 2 to these Regulations.

9. After section 179(1A) (company ceasing to be member of group: post appointment day cases)^{M7} insert—

“(1AA) If shares in a company are transferred as part of the process of the transfer of a business to which section 140A or 140C applies and in consequence of the transfer the company ceases to be a member of a group (“Group 1”)—

- (a) the company shall not be treated for the purposes of this section as having left Group 1, and
- (b) if the transferee is a member of a group (“Group 2”) and in consequence of the transfer the company becomes a member of Group 2 it shall be treated, for the purposes of this section, as if Group 1 and Group 2 were the same.”.

Marginal Citations

M7 Subsections (1) and (1A) of section 179 were substituted by paragraph 4(2) of Schedule 29 to the [Finance Act 2000 \(c. 17\)](#).

Loan relationships **U.K.**

^{F1}**10.**

Textual Amendments

F1 Sch. 1 para. 10 revoked (retrospective to 29.11.2007) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2008 \(S.I. 2008/1579\)](#), regs. 1(2), 5

PART 2 U.K.

AMENDMENTS OF ICTA

11. ICTA ^{M8} is amended as follows.

Marginal Citations

M8 1988 c. 1.

Exempt distributions U.K.

12. After section 209(1) (meaning of “distribution”) ^{M9} insert—

“(1A) If a company making a distribution as part of a merger to which section 140E or section 140F ^{M10} of the 1992 Act (cross-border mergers) applies ceases to exist in the course of the merger (without being wound up), the distribution shall be treated for the purposes of subsection (1) as a distribution in respect of share capital in a winding up.”.

Marginal Citations

M9 Section 209(1) was amended by section 40 of the Finance Act 2000.

M10 Section 140F is inserted by paragraph 2 of Schedule 2 to these Regulations.

13. After section 213 (exempt distributions) insert—

“213A Exempt distributions: division of business

(1) A reference in the Corporation Tax Acts to distributions of a company shall not apply to a distribution if—

(a) it is a distribution consisting of—

(i) the transfer of part of a business by a company (“the distributing company”) to one or more other companies (“the transferee company or companies”), and

(ii) the issue of shares by the transferee company or companies to the members of the distributing company, and

(b) the requirements of either section 140A(1A) of the 1992 Act (division of UK business) or section 140C(1A) of that Act (division of non-UK business) are satisfied in relation to the distribution.

(2) A distribution to which this section applies is an “exempt distribution” for the purposes of sections 214 to 217.

(3) The expression “relevant company” in sections 214 to 217 includes the distributing company and the transferee company or companies.”.

14. In section 218(1) (interpretation of sections 213 to 217)—

(a) for the definitions of “distributing company” and “exempt distribution” substitute—

““distributing company” means a company to which section 213(3)(b) or 213A(1)(a) applies;

“exempt distribution” means a distribution falling within section 213(2) or 213A;”, and

Changes to legislation: There are currently no known outstanding effects for the The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007, SCHEDULE 1. (See end of Document for details)

- (b) for the definition of “relevant company” substitute—
““relevant company” means a company falling within section 213(3) or 213A(3);”.

PART 3 U.K.

AMENDMENTS OF FA 1996

15. Schedule 9 to FA 1996 (loan relationships: special computational provisions)^{M11} is amended as follows.

Marginal Citations

M11 1996 c. 8.

Loan relationships U.K.

16. After paragraph 12C (European cross-border mergers) (inserted by paragraph 9 of Schedule 2) insert—

“Cross-border transfer of business within European Community

- 12D.**—(1) This paragraph applies where—
- (a) a company resident in one member State transfers to a company resident in another member State the whole or part of a business carried on in the United Kingdom,
 - (b) the transfer is wholly in exchange for shares or debentures issued by the transferee to the transferor,
 - (c) the transferor and the transferee each make a claim under this paragraph, and
 - (d) either—
 - (i) the transferee is resident in the United Kingdom immediately after the transfer, or
 - (ii) the transferee is within the charge to corporation tax immediately after the transfer in accordance with section 11 of the Taxes Act 1988^{M12}.
- (2) This paragraph also applies where a company transfers part of its business to one or more companies if—
- (a) the transferor is resident in one member State,
 - (b) the part of the transferor's business which is to be transferred is carried on by the transferor in the United Kingdom,
 - (c) at least one transferee is resident in a member State other than that in which the transferor is resident (and each transferee is resident in a member State, but not necessarily the same one),
 - (d) the transferor continues to carry on a business,
 - (e) the conditions in sub-paragraph (1)(c) and (d) are satisfied (for which purpose references to the transferee shall be treated as references to each of the transferees), and
 - (f) either of the following conditions is satisfied.
- (3) Condition 1 is that the transfer is made in exchange for shares in or debentures of each transferee company to the persons holding shares in or debentures of the transferor.

(4) Condition 2 is that the transfer is not made in exchange for the issue of shares in or debentures of each transferee by reason only, and to the extent only, that a transferee is prevented from complying with Condition 1 by section 658 of the Companies Act 2006 (rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing the issue of shares or debentures to itself.

(5) If Condition 2 applies in relation to the whole or part of a transfer, sections 24 and 122 of the Taxation of Chargeable Gains Act 1992 do not apply in relation to the transfer.

(6) Where this paragraph applies, in determining credits and debits to be brought into account for the purposes of this Chapter in respect of a loan relationship, if an asset or liability which represents the loan relationship is transferred in the course of the transfer of the business or part mentioned in sub-paragraph (1) or (2), the transferor and the transferee companies shall be treated as having entered into the transfer for a consideration equal to the notional carrying value (within the meaning given by paragraph 12(2)) of the asset or liability.

(7) Paragraph 12(2A) ^{M13} shall have effect (with any necessary modifications) in relation to this paragraph as it has effect in relation to paragraph 12.

12E.—(1) This paragraph applies to a transaction if—

- (a) a company resident in the United Kingdom transfers to a company resident in another member State the whole or part of a business which immediately before the transfer the transferor carried on in a member State other than the United Kingdom through a permanent establishment, and
- (b) the transfer is wholly or partly in exchange for shares or debentures issued by the transferee to the transferor.

(2) This paragraph also applies where a company resident in the United Kingdom transfers part of its business to one or more companies if—

- (a) the part of the transferor's business which is to be transferred was carried on immediately before the transfer in a member State other than the United Kingdom through a permanent establishment,
- (b) at least one transferee is resident in a member State other than the United Kingdom (and each transferee is resident in a member State, but not necessarily the same one),
- (c) the transferor continues to carry on a business after the transfer, and
- (d) either of the following conditions is satisfied.

(3) Condition 1 is that the transfer is made in exchange for the issue of shares in or debentures of each transferee company to the persons holding shares in or debentures of the transferor.

(4) Condition 2 is that the transfer is not made in exchange for the issue of shares in or debentures of each transferee by reason only, and to the extent only, that a transferee is prevented from complying with Condition 1 by section 658 of the Companies Act 2006 (rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing the issue of shares or debentures to itself.

(5) If, as a result of a transaction to which this paragraph applies, tax would have been chargeable under the law of one or more other member States in respect of the transfer of the loan relationship but for the Mergers Directive, Part 18 of the Taxes Act 1988 (double taxation relief) including any arrangements having effect by virtue of section 788 of that Act (bilateral relief) ^{M14} shall apply as if that tax had been chargeable.

(6) In calculating tax notionally chargeable under sub-paragraph (3) it shall be assumed—

- (a) that to the extent permitted by the law of the other member State losses arising on the transfer are set against gains arising on the transfer, and

Changes to legislation: There are currently no known outstanding effects for the The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007, SCHEDULE 1. (See end of Document for details)

(b) that any relief due to the transferor under that law is claimed.

12F.—(1) Paragraph 12D or 12E shall apply in relation to the transfer of the whole or part of a business 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 income tax, corporation tax or capital gains tax.

(2) But sub-paragraph (1) shall not prevent paragraph 12D or 12E from applying in relation to a transfer if before the transfer the Commissioners for Her Majesty's Revenue and Customs have on the application of the transferor and transferee or transferees notified them that the Commissioners are satisfied that sub-paragraph (1) will not prevent paragraph 12D or 12E from applying in relation to the transfer.

(3) Section 138(2) to (5) of the TCGA 1992 ^{M15} shall have the same effect in relation to sub-paragraph (2) above as in relation to section 138(1).

Exchanges, &c.: treatment of loan relationships

12G.—(1) This paragraph applies if sections 127 to 130 of TCGA 1992 (equation of original shares and new holding) apply in relation to a reorganisation.

(2) In this paragraph “the original shares” has the meaning given by section 126(1) of TCGA 1992.

(3) Where this paragraph applies and the original shares consist of or include an asset representing a loan relationship, then unless sub-paragraph (4), (5) or (6) applies such debits and credits shall be brought into account for the purposes of this Chapter as would have been brought into account if the transaction had been a disposal of the old asset at fair value.

(4) This sub-paragraph applies if the transaction is a conversion of securities (within the meaning given by section 132(3) ^{M16} of TCGA 1992) occurring in consequence of the operation of the terms of a security or a debenture which is not a security.

(5) This sub-paragraph applies if paragraph 12B, 12C, 12D(2) or 12E(2) above applies in relation to the transaction.

(6) This sub-paragraph applies if—

- (a) section 135 ^{M17} of TCGA 1992 applies in relation to the transaction, and
- (b) company A is resident in one member State and company B is resident in another member State.

(7) If sub-paragraph (4), (5) or (6) applies, such debits and credits shall be brought into account for the purposes of this Chapter as would have been brought into account if the transaction had been a disposal of the old asset at a consideration equal to its notional carrying value (within the meaning given by paragraph 12(2)).

(8) Paragraph 12(2A) ^{M18} shall have effect (with any necessary modifications) in relation to sub-paragraphs (4) to (7) as it has effect in relation to paragraph 12.”.

Marginal Citations

M12 Section 11 was amended by section 98 of the Finance Act 1990 (c. 29), **Schedule 23** to the Finance Act 1993 (c. 34), **section 165** of the Finance Act 1998 (c. 36) and section 149 of the Finance Act 2003 (c. 14).

M13 Paragraph 12(2A) was inserted by paragraph 29 of Schedule 25 to the Finance Act 2002.

- M14** Section 788 was amended by paragraphs 1 and 2 of Schedule 30 to the Finance Act 2000, section 88 of the Finance Act 2002, section 198 of the Finance Act 2003, section 882 of, and Schedule 1 to, the Income Tax (Trading and Other Income) Act 2005 (c. 5) and section 178 of the Finance Act 2006.
- M15** 1992 c. 12.
- M16** Section 132(3) was inserted by section 88 of the Finance Act 1997.
- M17** Section 135 was substituted by paragraph 7 of Schedule 9 to the Finance Act 2002.
- M18** Paragraph 12(2A) was inserted by paragraph 29 of Schedule 25 to the Finance Act 2002.

17. In paragraph 12A (transferee leaving group) ^{M19}—

(a) after sub-paragraph (5) insert—

“(5A) Where an asset or liability which represents a loan relationship is transferred as part of the process of a transfer to which paragraph 12B ^{M20} or 12D applies, and in consequence of the transfer the transferee company ceases to be a member of a group (“Group 1”)—

- (a) the transferee shall not be treated for the purposes of this paragraph as having left Group 1, and
- (b) if in consequence of the transfer the transferee becomes a member of another group (“Group 2”) it shall be treated, for the purposes of this paragraph, as if Group 1 and Group 2 were the same.”, and

(b) in sub-paragraph (8), in the definition of “exempt distribution” after “section 213(2)” insert “or 213A ^{M21}”.

Marginal Citations

- M19** Paragraph 12A of Schedule 9 was inserted by paragraph 18(1) of Schedule 7 to the Finance (No. 2) Act 2005.
- M20** Paragraph 12B was inserted by section 54 of the Finance (No. 2) Act 2005.
- M21** Section 213A is inserted by paragraph 13 of Schedule 1 to these Regulations.

PART 4 U.K.

AMENDMENTS OF FA 2002

18. FA 2002 ^{M22} is amended as follows.

Marginal Citations

- M22** 2002 c. 23.

Derivative contracts U.K.

19. After paragraph 30C of Schedule 26 (European cross-border mergers) (inserted by paragraph 11 of Schedule 2) insert—

“Cross-border transfer of business within European Community

30D.—(1) This paragraph applies where—

Changes to legislation: There are currently no known outstanding effects for the The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007, SCHEDULE 1. (See end of Document for details)

- (a) a company resident in one member State transfers to a company resident in another member State the whole or part of a business carried on in the United Kingdom,
 - (b) the transfer is wholly in exchange for shares or debentures issued by the transferee to the transferor,
 - (c) the transferor and the transferee each make a claim under this paragraph, and
 - (d) either—
 - (i) the transferee is resident in the United Kingdom immediately after the transfer, or
 - (ii) the transferee is within the charge to corporation tax immediately after the transfer in accordance with section 11 of the Taxes Act 1988.
- (2) This paragraph also applies where a company transfers part of its business to one or more companies if—
- (a) the transferor is resident in one member State,
 - (b) the part of the transferor's business which is to be transferred is carried on by the transferor in the United Kingdom,
 - (c) at least one transferee is resident in a member State other than that in which the transferor is resident (and each transferee is resident in a member State, but not necessarily the same one),
 - (d) the transferor continues to carry on a business after the transfer,
 - (e) the conditions in sub-paragraph (1)(c) and (d) are satisfied (for which purpose references to the transferee shall be treated as references to each of the transferees), and
 - (f) either of the following conditions is satisfied.
- (3) Condition 1 is that the transfer is made in exchange for the issue of shares in or debentures of each transferee company to the persons holding shares in or debentures of the transferor.
- (4) Condition 2 is that the transfer is not made in exchange for the issue of shares in or debentures of each transferee by reason only, and to the extent only, that a transferee is prevented from complying with Condition 1 by section 658 of the Companies Act 2006 ^{M23} (rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing the issue of shares or debentures to itself.
- (5) If Condition 2 applies in relation to the whole or part of a transfer, sections 24 and 122 of the Taxation of Chargeable Gains Act 1992 do not apply in relation to the transfer.
- (6) Where this paragraph applies, in determining credits and debits to be brought into account for the purposes of this Chapter in respect of a derivative contract, if the rights and liabilities under the derivative contract are transferred in the course of the transfer of the business or part mentioned in sub-paragraph (1) or (2), the transferor and the transferee companies shall be treated as having entered into the transfer for a consideration equal to the notional carrying value (within the meaning given by paragraph 28(3) ^{M24}) of the derivative contract.
- (7) Paragraph 30 ^{M25} shall have effect (with any necessary modifications) in relation to this paragraph as it has effect in relation to paragraph 28.

30E.—(1) This paragraph applies where—

- (a) a company resident in the United Kingdom transfers to a company resident in another member State the whole or part of a business which immediately before the transfer the transferor carried on in a member State other than the United Kingdom through a permanent establishment,

- (b) the transfer is wholly or partly in exchange for shares or debentures issued by the transferee to the transferor or to the persons holding shares in or debentures of the transferor,
 - (c) the transfer includes the transfer of rights or liabilities under a derivative contract, and
 - (d) the transferor makes a claim under this paragraph.
- (2) This paragraph also applies where a company resident in the United Kingdom transfers part of its business to one or more companies if—
- (a) the part of the transferor's business which is to be transferred was carried on immediately before the transfer in a member State other than the United Kingdom through a permanent establishment,
 - (b) at least one transferee is resident in a member State other than the United Kingdom (and each transferee is resident in a member State, but not necessarily the same one),
 - (c) the transferor continues to carry on a business,
 - (d) the conditions in sub-paragraph (1)(c) and (d) are satisfied, and
 - (e) either of the following conditions is satisfied.
- (3) Condition 1 is that the transfer is made in exchange for the issue of shares in or debentures of each transferee company to the persons holding shares in or debentures of the transferor.
- (4) Condition 2 is that the transfer is not made in exchange for the issue of shares in or debentures of each transferee by reason only, and to the extent only, that a transferee is prevented from complying with Condition 1 by section 658 of the Companies Act 2006 (rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing the issue of shares or debentures to itself.
- (5) Where tax would have been chargeable under the law of one or more other member States in respect of the transfer of rights and liabilities under the derivative contract but for the Mergers Directive, Part 18 of the Taxes Act 1988 (double taxation relief) including any arrangements having effect by virtue of section 788 of that Act (bilateral relief) shall apply as if that tax had been chargeable.
- (6) In calculating tax notionally chargeable under sub-paragraph (5) it shall be assumed—
- (a) that to the extent permitted by the law of the other member State losses arising on the transfer are set against gains arising on the transfer, and
 - (b) that any relief due to the transferor under that law is claimed.
- 30F.**—(1) Paragraph 30D or 30E shall apply in relation to the transfer of the whole or part of a business 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 income tax, corporation tax or capital gains tax.
- (2) But sub-paragraph (1) shall not prevent paragraph 30D or 30E from applying in relation to a transfer if before the transfer the Commissioners for Her Majesty's Revenue and Customs have on the application of the transferor and transferee or transferees notified them that the Commissioners are satisfied that sub-paragraph (1) will not prevent paragraph 30D or 30E from applying in relation to the transfer.
- (3) Section 138(2) to (5) of the TCGA 1992 shall have the same effect in relation to sub-paragraph (2) above as in relation to section 138(1).”.

Changes to legislation: There are currently no known outstanding effects for the The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007, SCHEDULE 1. (See end of Document for details)

Marginal Citations

M23 2006 c. 46.

M24 Paragraph 28(3) was inserted by paragraph 22 of Schedule 7 to the Finance (No. 2) Act 2005.

M25 Paragraph 30 was substituted by section 179(4) of the Finance Act 2003 and was amended by paragraph 23 of Schedule 6 to the Finance Act 2006.

20.—(1) Paragraph 30A^{M26} of Schedule 26 (transferee leaving group) is amended as follows.

(2) After sub-paragraph (5) insert—

“(5A) Where rights and liabilities under a derivative contract are transferred as part of the process of a transfer to which paragraph 30B or 30D applies, and in consequence of the transfer the transferee company ceases to be a member of a group (“Group 1”)—

- (a) the transferee shall not be treated for the purposes of this paragraph as having left Group 1, and
- (b) if in consequence of the transfer the transferee becomes a member of another group (“Group 2”) it shall be treated, for the purposes of this paragraph, as if Group 1 and Group 2 were the same.”.

(3) In sub-paragraph (8), in the definition of “exempt distribution” after “section 213(2)” insert “or 213A”.

Marginal Citations

M26 Paragraph 30A was inserted by paragraph 24(1) of Schedule 7 to the Finance (No. 2) Act 2005.

Intangible fixed assets **U.K.**

21.—(1) Paragraph 85 of Schedule 29 (transfer of UK trade between companies resident in different EU member states) is amended as follows.

(2) For sub-paragraph (1) substitute—

“(1) This paragraph applies where—

- (a) an EU company resident in one member State (“the transferor”) transfers the whole or part of the business carried on by it in the United Kingdom to an EU company resident in another member State (“the transferee”),
- (b) the transfer is wholly in exchange for securities issued by the transferee to the transferor, and
- (c) a claim is made under this paragraph by the transferor and the transferee.

(1A) This paragraph also applies where an EU company transfers part of its business to one or more EU companies if—

- (a) the transferor is resident in one member State,
- (b) the part of the transferor's business which is to be transferred is carried on by the transferor in the United Kingdom,
- (c) at least one transferee is resident in a member State other than that in which the transferor is resident,
- (d) the transferor continues to carry on a business after the transfer,

(e) a claim is made under this paragraph by the transferor and the transferee (or each of the transferees), and

(f) either of the following conditions is satisfied.

(1B) Condition 1 is that the transfer is made in exchange for the issue of shares in or debentures of each transferee company to the persons holding shares in or debentures of the transferor.

(1C) Condition 2 is that the transfer is not made in exchange for the issue of shares in or debentures of each transferee by reason only, and to the extent only, that a transferee is prevented from complying with Condition 1 by section 658 of the Companies Act 2006 (rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing the issue of shares or debentures to itself.

(1D) If Condition 2 applies in relation to the whole or part of a transfer, sections 24 and 122 of the Taxation of Chargeable Gains Act 1992 do not apply in relation to the transfer. ”.

(3) In sub-paragraph (4) for “trade” substitute “ business ”.

(4) In sub-paragraph (5) after “transferee” insert “ (or each of the transferees) ”.

(5) The heading above paragraph 85 accordingly becomes “ Transfer of UK business between companies resident in different EU member States ”.

22.—(1) Paragraph 87 of Schedule 29 (transfer of non-UK trade) is amended as follows,

(2) For sub-paragraph (1) ^{M27} substitute—

“(1) This paragraph applies where—

(a) an EU company resident in the United Kingdom (“the transferor”) transfers to an EU company resident in another member State (“the transferee”) the whole or part of a business that, immediately before the time of the transfer, the transferor carried on in a member state other than the United Kingdom (“the other member State”) through a permanent establishment,

(b) the transfer—

(i) includes the whole of the assets of the transferor used for the purposes of the business or part (or the whole of those assets other than cash), and

(ii) is wholly or partly in exchange for securities issued by the transferee to the transferor,

(c) 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 costs recognised for tax purposes, and

(d) the transferor makes a claim under this paragraph.

(1A) This paragraph also applies where an EU company resident in the United Kingdom transfers part of its business to one or more EU companies—

(a) immediately before the time of the transfer, the transferor was carrying on the part of its business to be transferred in the other member State through a permanent establishment,

(b) at least one transferee is resident in a member State other than the United Kingdom,

(c) the transferor continues to carry on a business,

Changes to legislation: There are currently no known outstanding effects for the The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007, SCHEDULE 1. (See end of Document for details)

- (d) the conditions in sub-paragraph (1)(b)(i), (c) and (d) are satisfied, and
- (e) either of the following conditions is satisfied.

(1B) Condition 1 is that the transfer is made in exchange for the issue of shares in or debentures of each transferee company to the persons holding shares in or debentures of the transferor.

(1D) Condition 2 is that the transfer is not made in exchange for the issue of shares in or debentures of each transferee by reason only, and to the extent only, that a transferee is prevented from complying with Condition 1 by section 658 of the Companies Act 2006 (rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing the issue of shares or debentures to itself.”

- (3) In sub-paragraph (7) for “trade” substitute “ business ”.
- (4) The heading accordingly becomes “ Transfer of non-UK business ”.

Marginal Citations

M27 Paragraph 87(1) was amended by section 153 of the Finance Act 1993.

23. After paragraph 58(5) of Schedule 29 insert—

“(6) Where a relevant asset is transferred as part of the process of a transfer to which paragraph 85 or 87 applies, and in consequence of the transfer the transferee ceases to be a member of a group (“Group 1”)—

- (a) the transferee shall not be treated for the purposes of this paragraph as having left Group 1, and
- (b) if in consequence of the transfer the transferee becomes a member of another group (“Group 2”) it shall be treated, for the purposes of this section, as if Group 1 and Group 2 were the same.”.

24. In paragraph 127 (certain assets to be treated as existing assets)—

- (a) in sub-paragraph (1)(b)(ii) for “trade” substitute “ business ”, and
- (b) in sub-paragraph (1)(b)(iii) ^{M28} for “(transfer on formation of SE by merger)” substitute “ (merger leaving assets within UK tax charge) ”.

Marginal Citations

M28 Paragraph 127(1)(b)(iii) was inserted by section 59(6) of the Finance (No. 2) Act 2005.

PART 5 U.K.

AMENDMENT OF CAA 2001

Capital allowances U.K.

25.—(1) Section 561 of CAA 2001 (transfer of UK trade to a company in another member state) ^{M29} is amended as follows.

- (2) For subsection (1) substitute—
 - “(1) This section applies if and in so far as—

- (a) a qualifying company resident in one member State (“the transferor”) transfers the whole or part of a business carried on by it in the United Kingdom to one or more qualifying companies resident in one or more other member States (“the transferee” or “the transferees”),
 - (b) section 140A ^{M30} of TCGA 1992 (transfer of assets treated as no-gain no-loss disposal) applies in relation to the transfer, and
 - (c) immediately after the transfer the transferee (or one or more of the transferees)—
 - (i) is resident in the United Kingdom, or
 - (ii) carries on in the United Kingdom through a permanent establishment a business which consists of, or includes, the business or part of the business transferred.”.
- (3) In subsection (2)(b)—
- (a) for “company A” substitute “ the transferor ”, and
 - (b) for “company B” substitute “ the transferee (or each transferee) ”.
- (4) The heading accordingly becomes “ Transfer or division of UK business ”.

Marginal Citations

M29 2001 c. 2.

M30 Section 140A was inserted by section 44 of the Finance (No. 2) Act 1992.

Changes to legislation:

There are currently no known outstanding effects for the The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007, SCHEDULE 1.