

SCHEDULE 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 4

AMENDMENTS OF FA 2002

18. FA 2002 ^{M1} is amended as follows.

Marginal Citations

- M1** 2002 c. 23.

Derivative contracts

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—

- (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,

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- (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 ^{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.

(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) ^{M3}) of the derivative contract.

(7) Paragraph 30 ^{M4} 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).”.

Marginal Citations

M2 2006 c. 46.

M3 Paragraph 28(3) was inserted by paragraph 22 of Schedule 7 to the Finance (No. 2) Act 2005.

M4 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 ^{M5} 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 ”.

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Marginal Citations

M5 Paragraph 30A was inserted by paragraph 24(1) of Schedule 7 to the Finance (No. 2) Act 2005.

Intangible fixed assets

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) ^{M6} 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,
 - (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

M6 [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”)—

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- (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) ^{M7} for “(transfer on formation of SE by merger)” substitute “ (merger leaving assets within UK tax charge) ”.

Marginal Citations

M7 [Paragraph 127\(1\)\(b\)\(iii\)](#) was inserted by section 59(6) of the Finance (No. 2) Act 2005.

Changes to legislation:

There are currently no known outstanding effects for the The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007, PART 4.