

SCHEDULE 3

MERGERS, &C.: TREATMENT OF TRANSPARENT ENTITIES

Modifications etc. (not altering text)

- C1** Sch. 3 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 3

AMENDMENTS OF FA 2002

Derivative contracts

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

Marginal Citations

- M1** 2002 c 23.

4. After paragraph 30F of Schedule 26 (European cross-border mergers) (inserted by paragraph 19 of Schedule 1) insert—

“Transparent entities

30G.—(1) This paragraph applies in relation to a transfer of a business, or a part of a business, where—

- (a) the transfer is of a kind to which paragraph 30D(1) or (2) ^{M2} applies (or to which either of those provisions would apply if the business, or the part of the business, transferred were carried on by the transferor in the United Kingdom and one of the conditions mentioned in paragraph 30D(1)d) were satisfied in relation to the transferee, or each of the transferees), and
- (b) the transferor is a transparent entity.

(2) Where this paragraph applies paragraph 30D(3) does not apply in relation to the transfer.

(3) If, as a result of a transfer to which this paragraph applies, a transfer profit would, but for the Mergers Directive, have been chargeable to tax under the law of a member State other than the United Kingdom, 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, calculated in accordance with sub-paragraph (5), had been chargeable.

(4) In sub-paragraph (3) “transfer profit” means a profit accruing to a transparent entity in respect of a derivative contract (or which would be treated as accruing to that entity were it not transparent) by reason of the transfer of assets by the transparent entity to the transferee.

(5) Tax is calculated in accordance with this sub-paragraph if—

- (a) so far as permitted under the law of the relevant member State, losses arising on the transfer are set against profits arising on the transfer, and
- (b) any relief available under that law has been claimed.

Changes to legislation: There are currently no known outstanding effects for the The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007, PART 3. (See end of Document for details)

30H.—(1) This paragraph applies in relation to a merger if—

- (a) the merger is of a kind to which paragraph 30B(1) applies,
- (b) the conditions in paragraph 30B(2) are satisfied in relation to the merger, and
- (c) one or more of the merging companies is a transparent entity.

(2) Where this paragraph applies, if the assets and liabilities of a transparent entity are transferred to another company by reason of the merger, paragraph 30B(3) shall not apply.

(3) If, as a result of a merger in relation to which this paragraph applies, a merger profit would, but for the Mergers Directive, have been chargeable to tax under the law of a member State other than the United Kingdom, 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, calculated in accordance with sub-paragraph (5), had been chargeable.

(4) In sub-paragraph (3) “merger profit” means a profit in respect of a derivative contract accruing to a transparent entity (or which would be treated as accruing to that entity were it not transparent) by reason of the transfer of assets by the transparent entity to another company on the merger.

(5) Tax is calculated in accordance with this sub-paragraph if—

- (a) so far as is permitted under the law of the relevant member State, losses arising on the transfer are set against profits arising on the transfer, and
- (b) any relief available under that law has been claimed.

30I.—(1) In paragraphs 30A ^{M3} to 30H, unless the contrary intention appears—

- (a) “the Mergers Directive” means Council Directive 90/434/ EEC of 23rd July 1990 on mergers, transfers &c.,
- (b) “company” (except in paragraph 30B) means an entity listed as a company in the Annex to the Mergers Directive, and
- (c) “transparent entity” means an entity which is resident in a member State other than the United Kingdom and is listed as a company in the Annex to the Mergers Directive, but which does not have an ordinary share capital (within the meaning given by section 832 of the Taxes Act).

(2) For the purposes of those paragraphs and sub-paragraph (1) above, 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 purpose of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.”.

Marginal Citations

M2 Paragraphs 30D to 30F were inserted by paragraph 19 of Schedule 1 to these Regulations.

M3 Paragraph 30A was inserted by paragraph 24 of Schedule 7 to the Finance (No. 2) Act 2005. Paragraphs 30B and 30C are inserted by paragraph 11 of Schedule 2 to these Regulations.

Intangible assets

5. After paragraph 85A of Schedule 29 (European cross-border mergers) (inserted by paragraph 12 Schedule 2) insert—

“Transparent entities

85B.—(1) This paragraph applies in relation to a transfer of a business, or a part of a business, where—

- (a) the transfer is of a kind to which paragraph 85(1) or (1A) ^{M4} applies (or to which either of those provisions would apply if the business, or the part of the business, transferred were carried on by the transferor in the United Kingdom), and
- (b) the transferor is a transparent entity.

(2) Where this paragraph applies paragraph 85(2) does not apply in relation to the transfer.

(3) If, as a result of a transfer to which this paragraph applies, a transfer profit would, but for the Mergers Directive, have been chargeable to tax under the law of a member State other than the United Kingdom, 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, calculated in accordance with sub-paragraph (5), had been chargeable.

(4) In sub-paragraph (3) “transfer profit” means a profit which would be treated as accruing to a transparent entity in respect of an intangible fixed asset were it not transparent, by reason of the transfer of assets by the transparent entity.

(5) Tax is calculated in accordance with this sub-paragraph if—

- (a) so far as permitted under the law of the relevant member State, losses arising on the transfer are set against profits arising on the transfer, and
- (b) any relief available under that law has been claimed.

85C.—(1) This paragraph applies in relation to a merger if—

- (a) the merger is of a kind to which paragraph 85A(1) applies,
- (b) the conditions in paragraph 85A(2) are satisfied in relation to it,
- (c) one or more of the merging companies is a transparent entity.

(2) Where this paragraph applies, if the assets and liabilities of a transparent entity are transferred to another company by reason of the merger, paragraph 85A(3) shall not apply.

(3) If, as a result of a merger in relation to which this paragraph applies, a merger profit would, but for the Mergers Directive, have been chargeable to tax under the law of a member State other than the United Kingdom, 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, calculated in accordance with sub-paragraph (5), had been chargeable.

(4) In sub-paragraph (3) “merger profit” means a profit which would be treated as accruing to a transparent entity in respect of an intangible fixed asset were it not transparent, by reason of the transfer of assets by the transparent entity on the merger.

(5) Tax is calculated in accordance with this sub-paragraph if—

- (a) so far as is permitted under the law of the relevant member State, losses arising on the transfer are set against profits arising on the transfer, and
- (b) any relief available under that law has been claimed.

85D.—(1) In paragraphs 85B and 85C—

- (a) “the Mergers Directive” means Council Directive 90/434/ EEC of 23rd July 1990 on mergers, transfers &c.,
- (b) “company” means an entity listed as a company in the Annex to the Mergers Directive, and

Changes to legislation: There are currently no known outstanding effects for the The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007, PART 3. (See end of Document for details)

- (c) “transparent entity” means an entity which is resident in a member State other than the United Kingdom and is listed as a company in the Annex to the Mergers Directive, but which does not have an ordinary share capital (within the meaning given by section 832 of the Taxes Act).
- (2) For the purposes of those paragraphs and sub-paragraph (1) above, 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 purpose of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.”.

Marginal Citations

M4 Paragraph 85(1A) was inserted by paragraph 21 of Schedule 1 to these Regulations.

Changes to legislation:

There are currently no known outstanding effects for the The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007, PART 3.