

SCHEDULE 2

Regulation 3

AMENDMENTS TO FA 1996

1. Schedule 9 to FA 1996 (loan relationships: special computational provisions) is amended as follows.

2. In paragraph 12A(5A)(1) (transferee leaving group after replacing transferor as party to loan relationship) before “transfer”, in each place, insert “merger or”.

3.—(1) Paragraph 12B(2) (European cross-border merger) is amended as follows.

(2) In sub-paragraph (2)—

(a) omit “and” at the end of paragraph (c), and

(b) after paragraph (d) insert—

“and

(e) in the case of a merger to which sub-paragraph (1)(c) or (d) applies, in the course of the merger each transferor ceases to exist without being in liquidation (within the meaning given by section 247 of the Insolvency Act 1986 (c.55)).”.

(3) In sub-paragraph (3) after “determining” insert “the”.

(4) Omit sub-paragraph (5).

(5) In sub-paragraph (9) omit paragraph (d).

4. In paragraph 12C(2)(3) (double taxation relief on European cross-border merger)—

(a) omit “and” at the end of paragraph (d), and

(b) after paragraph (e) insert—

“and

(f) in the case of a merger to which sub-paragraph (1)(c) or (d) applies, in the course of the merger each transferor ceases to exist without being in liquidation (within the meaning given by section 247 of the Insolvency Act 1986 (c.55)).”.

5.—(1) Paragraph 12D(4) (cross-border transfer of business within European Community) is amended as follows.

(2) In sub-paragraph (1) for paragraph (d) substitute—

“(d) the transferee—

(i) is resident in the United Kingdom immediately after the transfer, or

(ii) is within the charge to corporation tax immediately after the transfer in accordance with section 11 of the Taxes Act 1988.”.

(3) In sub-paragraph (3) after “exchange for” insert “the issue of”.

(4) Omit sub-paragraph (5).

(5) In sub-paragraph (6) after “determining” insert “the”.

(1) Paragraph 12A was inserted by paragraph 18 of Schedule 7 to the Finance (No. 2) Act 2005 and was amended by paragraph 17 of Schedule 1 to [S.I. 2007/3186](#).

(2) Paragraph 12B was inserted by section 54(1) of the Finance (No. 2) Act 2005 and was substituted by paragraph 8 of Schedule 2 to [S.I. 2007/3186](#).

(3) Paragraph 12C was inserted by paragraph 8 of Schedule 2 to [S.I. 2007/3186](#).

(4) Paragraphs 12D to 12G were inserted by paragraph 16 of Schedule 1 to [S.I. 2007/3186](#).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

6. In paragraph 12E(5) (double taxation relief on cross-border transfer of business within European Community) for “the loan relationship” substitute “an asset or liability representing a loan relationship”.

7. In paragraph 12F(3) (cross-border transfer of business within European Community: anti-avoidance requirements) for “TCGA 1992” substitute “Taxation of Chargeable Gains Act 1992 (c.12)”.

8. For paragraph 12G (exchanges etc: treatment of loan relationships) substitute—

“12G.—(1) This paragraph applies if—

- (a) sections 127 to 130 of the Taxation of Chargeable Gains Act 1992 (c. 12) apply or would apply apart from section 116(5) of that Act,
- (b) the original shares consist of or include an asset representing a loan relationship, and
- (c) condition A or B is met.

(2) Condition A is that paragraph 12B, 12C, 12D(2) or 12E(2) applies in relation to the reorganisation.

(3) Condition B is that—

- (a) sections 127 to 130 of the Taxation of Chargeable Gains Act 1992 apply (or would apply apart from section 116(5) of that Act) as a result of section 135(3) of that Act (which provides for those sections to apply to an exchange of securities as if it were a reorganisation), and
- (b) company A is resident in one member State and company B is resident in another member State.

(4) Such debits and credits shall be brought into account for the purposes of this Chapter as would be brought into account if the reorganisation were a disposal of the asset representing a loan relationship at a consideration equal to its notional carrying value (within the meaning given by paragraph 12(2)).

(5) Paragraph 12(2A) shall have effect (with any necessary modifications) in relation to this paragraph as it has effect in relation to paragraph 12.

(6) In this paragraph—

- “company A” and “company B” have the same meaning as in section 135 of the Taxation of Chargeable Gains Act 1992,
- “the original shares” has the meaning given by section 126(1) of that Act, and
- “reorganisation” includes anything to which sections 127 to 130 of that Act apply as if it were a reorganisation.”.

9.—(1) Paragraph 12H(5) (transparent entities) is amended as follows.

(2) In sub-paragraph (1)(a)—

- (a) for “to which paragraph 12D(1) or (2) applies (or to which either of those provisions would apply” substitute “mentioned in paragraph 12D(1) or (2) (or which would be of such a kind”, and
- (b) for “one of the conditions” substitute “the condition”.

(3) In sub-paragraph (2)—

- (a) in paragraph (a) for “12D(3) and 12G(6)” substitute “12D and 12G”, and

(5) Paragraphs 12H to 12J were inserted by paragraph 2 of Schedule 3 to S.I. 2007/3186.

(b) in paragraph (b) for “12G(6)” substitute “12G”.

(4) In sub-paragraph (4) after “transfer of assets” insert “or liabilities representing a loan relationship”.

(5) In sub-paragraph (5)(a) after “transfer”, in each place, insert “of those assets or liabilities”.

10.—(1) Paragraph 12I (double taxation relief on European cross-border merger) is amended as follows.

(2) In sub-paragraph (1)(a) for “to which paragraph 12B(1) applies” substitute “mentioned in paragraph 12B(1)”.

(3) In sub-paragraph (2)—

(a) in paragraph (a) for “12B(3) and 12G(6) shall not apply” substitute “12B and 12G shall not apply in relation to the transfer”, and

(b) in paragraph (b) for “12G(6)” substitute “12G”.

(4) In sub-paragraph (4) after “transfer of assets” insert “or liabilities representing a loan relationship”.

(5) In sub-paragraph (5)(a) after “transfer”, in each place, insert “of those assets or liabilities”.

11.—(1) Paragraph 12J (interpretation) is amended as follows.

(2) In sub-paragraph (1)—

(a) after “12I” insert “and this paragraph”, and

(b) in sub-paragraph (b) omit “(except in paragraph 12B)”.

(3) In sub-paragraph (2) omit “and sub-paragraph (1) above”.

12. In paragraph 19A(4B)(g)(6) (adjustment on change of accounting policy) after “12” insert “12B, 12D”.

(6) Paragraph 19A was inserted by section 52 of, and paragraph 36 of Schedule 10 to, the [Finance Act 2004 \(c. 12\)](#). Sub-paragraphs (4A) to (4D) were inserted by section 80 of, and paragraph 31 of Schedule 4 to, the [Finance Act 2005 \(c. 7\)](#). Sub-paragraph (6) was repealed by section 104 of, and Schedule 11 Part 2(7) to, the Finance Act 2005. Sub-paragraph (4B)(g) was amended by section 37 of, and paragraph 4(2) of Schedule 6 to, the [Finance \(No. 2\) Act 2005 \(c. 22\)](#).