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STATUTORY INSTRUMENTS

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**2009 No. 2971**

**TAXES**

**The Mutual Societies (Transfers of Business) (Tax) Regulations 2009**

*Made* - - - - *9th November 2009*  
*Laid before the House of*  
*Commons* - - - - *10th November 2009*  
*Coming into force* - - *1st December 2009*

The Treasury make the following Regulations in exercise of the powers conferred by section 124 of the Finance Act 2009<sup>(1)</sup>.

**PART 1**

**PRELIMINARY PROVISIONS AND INTERPRETATION**

**Citation, commencement and effect**

**1.**—(1) These Regulations may be cited as the Mutual Societies (Transfers of Business) (Tax) Regulations 2009 and shall come into force on 1st December 2009.

(2) Regulations 2 to 11, 15 to 25, and 31 to 34 shall have effect—

- (a) in relation to any relevant transfer which takes place on or after 22 April 2009; and
- (b) in relation to any land transaction which forms part of a relevant transfer to which these Regulations apply where the effective date of that land transaction is on or after 22 April 2009.

(3) Regulations 12 to 14, 26 to 30, and 35 shall have effect in relation to any relevant transfer which takes place on or after 1st December 2009.

**Interpretation**

**2.**—(1) In these Regulations—

“CTA” means the Corporation Tax Act 2009<sup>(2)</sup>;

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(1) 2009 c. 10.  
(2) 2009 c. 4.

- “FA, followed by a year” means the Finance Act of that year;
- “ICTA” means the Income and Corporation Taxes Act 1988<sup>(3)</sup>;
- “TCGA” means the Taxation of Chargeable Gains Act 1992<sup>(4)</sup>;
- “75% subsidiary” has the meaning given by section 838 of ICTA<sup>(5)</sup>;
- “business” includes engagements;
- “chargeable intangible asset” has the meaning given by section 741 of CTA (meaning of “chargeable intangible asset”);
- “commercial company” means a company formed and registered under the Companies Act 2006 (or treated as formed and registered under that Act) which is a public company limited by shares<sup>(6)</sup>;
- “creditor relationship” has the meaning given by section 302(5) of CTA (“loan relationship”, “creditor relationship”, “debtor relationship”);
- “debtor relationship” has the meaning given by section 302(6) of CTA (“loan relationship”, “creditor relationship”, “debtor relationship”);
- “effective date” has the meaning given by section 119 of FA 2003 (meaning of “effective date” of a transaction)<sup>(7)</sup>;
- “fair value accounting” has the meaning given by section 313 of CTA (basis of accounting);
- “land transaction” has the meaning given by section 43(1) of FA 2003 (land transactions);
- “loan relationship” includes matters treated as a loan relationship by Part 6 of CTA (relationships treated as loan relationships);
- “relevant transfer” has the meaning given by regulation 3;
- “subsidiary of a mutual society” means a company within the meaning of the Companies Act 2006—
- (a) in which a building society, an industrial and provident society or a friendly society, as the case may be, holds a majority of the voting rights or of which that society is a member and alone controls, pursuant to an agreement with other shareholders or members, a majority of the voting rights; and
  - (b) in relation to which that society has the right to appoint or remove a majority of the company’s board of directors;
- “tax-neutral” has the meaning given by section 776 of CTA (meaning of tax neutral transfer).
- (2) In regulations 5 to 7 and 16 to 18 “asset” has the meaning given by section 21 of TCGA (assets and disposals)<sup>(8)</sup>.
- (3) In regulations 6, 7, 9, 17, 18 and 25 references to a company being a member of a group of companies are to be read in accordance with section 170 of TCGA (interpretation of sections 171 to 181)<sup>(9)</sup>.
- (4) In regulations 13 and 29 “group” has the meaning given by Chapter 8 of Part 8 of CTA (intangible fixed assets).

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(3) 1988 c. 1.

(4) 1992 c. 12.

(5) Section 838 has been amended by paragraph 222 of Schedule 1 to the [Income Tax Act 2007](#) (c. 3).

(6) 2006 c. 46.

(7) 2003 c. 14. Section 119 has been amended by paragraph 8 of Schedule 39 to the [Finance Act 2004](#) (c. 12).

(8) Section 21 has been amended by paragraphs 7 and 9 of Schedule 12 to the [Finance Act 2006](#) (c. 25).

(9) Section 170 has been relevantly amended by paragraph 5 of Schedule 6 to the [Finance \(No 2\) Act 1992](#) (c. 48); by paragraph 1 of Schedule 29, and Part 2 of Schedule 40, to the [Finance Act 2000](#) (c. 17); by section 75(4) and (6) of the [Finance Act 2001](#) (c. 9); by paragraphs 358 and 374 of Schedule 1, and Part 1 of Schedule 3, to CTA 2009 and by S.I. 2009/1890.

(5) In these Regulations references to a person being connected with another are to be read in accordance with section 839 of ICTA (connected persons)(10).

### Meaning of relevant transfer

- 3.—(1) A “relevant transfer” by a building society is—
- (a) an amalgamation of two or more building societies (“the transferor”) by the establishment of a successor building society (“the transferee”) in accordance with section 93 of the Building Societies Act 1986 (amalgamations)(11);
  - (b) a transfer by a building society (“the transferor”) of the whole of its business to another building society (“the transferee”) in accordance with section 94 of the Building Societies Act 1986 (transfers of engagements)(12);
  - (c) a transfer by a building society (“the transferor”) of part of its business to another building society (“the transferee”) in accordance with section 94 (transfers of engagements) of the Building Societies Act 1986;
  - (d) a transfer by a building society (“the transferor”) of the whole of its business to a commercial company (“the transferee”) in accordance with section 97 of the Building Societies Act 1986 (transfers of business to commercial company)(13); or
  - (e) a transfer by a building society (“the transferor”) of the whole of its business to a subsidiary of a mutual society (“the transferee”) in accordance with section 97 of the Building Societies Act 1986 (transfers of business to commercial company).
- (2) A “relevant transfer” by an industrial and provident society is—
- (a) an amalgamation of two or more industrial and provident societies (“the transferor”) into one industrial and provident society (“the transferee”) in accordance with section 50 of the Industrial and Provident Societies Act 1965 (amalgamation of societies)(14);
  - (b) a transfer by an industrial and provident society (“the transferor”) of the whole of its business to another industrial and provident society (“the transferee”) in accordance with section 51 of the Industrial and Provident Societies Act 1965 (transfer of engagements between societies);
  - (c) a transfer by an industrial and provident society (“the transferor”) of part of its business to one or more industrial and provident societies (“the transferee”) in accordance with section 51 of the Industrial and Provident Societies Act 1965 (transfer of engagements between societies);
  - (d) a conversion of an industrial and provident society (“the transferor”) into a company (“the transferee”) in accordance with section 52 of the Industrial and Provident Societies Act 1965 (conversion into, amalgamation with, or transfer of engagements to company)(15);

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(10) Section 839 has been amended by paragraph 20 of Schedule 17 to the [Finance Act 1995 \(c. 4\)](#); by paragraph 25 of Schedule 13 to the Finance Act 2006; by paragraph 223 of Schedule 1 to the Income Tax Act 2007 and by [S.I. 2005/3229](#).

(11) [1986 c. 53](#). Section 93 has been amended by paragraph 41 of Schedule 7 to the [Building Societies Act 1997 \(c. 32\)](#) and by [S.I. 1997/2668](#); [2001/2617](#) and [2001/3538](#).

(12) Section 94 has been amended by paragraph 42 of Schedule 7 to the Building Societies Act 1997 and by [S.I.1997/2668](#); [2001/2617](#) and [2001/3538](#).

(13) Section 97 has been amended by paragraph 45 of Schedule 7 to the Building Societies Act 1997; by section 1(2) of the [Building Societies \(Distributions\) Act 1997 \(c. 41\)](#); by section 3 of the [Building Societies \(Funding\) and Mutual Societies \(Transfers\) Act 2007 \(c. 26\)](#); and by [S.I. 1997/1427](#); [1997/2668](#); [2001/2617](#); [2001/3538](#); [2008/1519](#); [2009/509](#) and [2009/1941](#).

(14) [1965 c. 12](#). Section 50 has been amended by [S.I. 2001/2617](#) and [3538](#).

(15) Section 52 has been amended by section 30 of, and Schedule 2 to, the [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9\)](#); by sections 1(2) and 4(2) of the [Industrial and Provident Societies Act 2002 \(c. 20\)](#); by section 3 of the [Building Societies \(Funding\) and Mutual Societies \(Transfers\) Act 2007](#) and by [S.I. 2001/2617](#); [2001/3538](#) and [2009/1941](#).

- (e) an amalgamation of an industrial and provident society (“the transferor”) with a company (“the transferee”) in accordance with section 52 of the Industrial and Provident Societies Act 1965 (conversion into, amalgamation with, or transfer of engagements to company); or
  - (f) a transfer by an industrial and provident society (“the transferor”) of the whole of its business to a company (“the transferee”) in accordance with section 52 of the Industrial and Provident Societies Act 1965 (conversion into, amalgamation with, or transfer of engagements to company).
- (3) A “relevant transfer” by a friendly society is—
- (a) an amalgamation of two or more friendly societies (“the transferor”) by the establishment of a successor society (“the transferee”) in accordance with section 85 of the Friendly Societies Act 1992 (amalgamation of friendly societies)(**16**);
  - (b) a transfer by a friendly society (“the transferor”) of the whole of its business to a person (“the transferee”) referred to in section 86 of the Friendly Societies Act 1992 (transfer of engagements by or to friendly society)(**17**);
  - (c) a transfer by a friendly society (“the transferor”) of part of its business to a person (“the transferee”) referred to in section 86 of the Friendly Societies Act 1992 (transfer of engagements by or to friendly society);
  - (d) a transfer by a friendly society (“the transferor”) of the whole of its business to a person (“the transferee”) specified by the Financial Services Authority in accordance with section 90 of the Friendly Societies Act 1992 (power of authority to effect transfer of engagements)(**18**); or
  - (e) a conversion of a friendly society (“the transferor”) into a company (“the transferee”) in accordance with section 91 of the Friendly Societies Act 1992 (conversion of friendly society into company)(**19**).

## PART 2

### BUILDING SOCIETIES

#### **Relevant transfer by a building society**

- 4.—(1) This regulation applies if there is a relevant transfer by a building society.
- (2) The Corporation Tax Acts shall have effect in relation to the relevant transfer subject to paragraphs (3) to (18).
- (3) For the purposes of the allowances and charges provided for by the Capital Allowances Act 2001(**20**) a trade which is transferred or amalgamated as a result of the relevant transfer shall not be treated as permanently discontinued nor shall a new trade be treated as set up and commenced, and—
- (a) there shall be made to or on the transferee in accordance with that Act all such allowances and charges as would, if the transferor had continued to carry on the trade, have fallen to be made to or on the transferor; and
  - (b) the amount of any such allowance or charge shall be computed as if—
    - (i) the transferee had been carrying on the trade since the transferor began to do so, and

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(16) 1992 c. 40. Section 85 has been amended by S.I. 2001/2617; 2001/3538 and 2001/3649.

(17) Section 86 has been amended by section 3 of the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007 and by S.I. 2001/2617; 2001/3538; 2001/3649 and by 2009/1941.

(18) Section 90 has been amended by S.I. 2001/2617; 2001/3538 and by 2001/3649.

(19) Section 91 has been amended by S.I. 2001/2617 and by 2001/3538.

(20) 2001 c. 2.

- (ii) everything done to or by the transferor had been done to or by the transferee (but so that no sale or transfer which, on the transfer of the trade, is made to the transferee by the transferor of any assets in use for the purpose of the trade shall be treated as giving rise to any such allowance or charge).

(4) The transferee shall be entitled to such relief under section 393(1) of ICTA (losses other than terminal losses)(21), as for a loss sustained by the transferee in carrying on the trade, for any amount for which the transferor would have been entitled to relief if it had continued to carry on the trade.

This paragraph is subject to paragraph (5) and to any claim made by the transferor under section 393A(1) of ICTA (losses: set off against profits of the same, or an earlier, accounting period)(22).

(5) If the amount of relevant liabilities exceeds the value of relevant assets, the transferee shall be entitled to relief by virtue of paragraph (4) only if, and only to the extent that, the amount of that excess is less than the amount mentioned in that paragraph.

(6) For the purposes of paragraph (5)—

- (a) the value of assets (other than money) shall be taken to be the price which they might reasonably be expected to have fetched on a sale in the open market immediately before the predecessor ceased to carry on the trade; and
- (b) the amount of liabilities shall be taken to be their amount at that time.

(7) Subsection (2A) of section 393A of ICTA (losses: set off against profits of the same, or an earlier, accounting period) shall not apply to any loss which (but for this paragraph) would fall within subsection (2B) of that section by virtue of the transferor ceasing to carry on the trade, and subsection (7) of that section shall not apply for the computation of any such loss.

(8) If, on the transferor ceasing to carry on the trade, the transferee begins to carry on the activities of the trade as part of its trade, then that part of the trade carried on by the transferee shall be treated for the purposes of this regulation as a separate trade, if the effect of so treating it is that paragraph (2) has effect on that event in relation to that separate trade.

(9) If, on the transferor ceasing to carry on part of a trade, the transferee begins to carry on the activities of that part as its trade or part of its trade, the transferor shall for the purposes of this regulation be treated as having carried on that part of its trade as a separate trade if the effect of so treating it is that paragraph (2) has effect on that event in relation to that separate trade.

(10) If, under paragraphs (8) or (9), any activities of the transferor fall, on that transferor ceasing or beginning to carry them on, to be treated as a separate trade, such apportionments of receipts, expenses, assets or liabilities shall be made as may be just and reasonable.

(11) If, by virtue of paragraph (10), any item falls to be apportioned and, at the time of the apportionment, it appears that it is material as respects the liability to tax (for whatever period) of two or more building societies or a commercial company or a subsidiary of a mutual society, any question which arises as to the manner in which the item shall be apportioned shall be determined, for the purposes of the tax of those building societies, commercial company or subsidiary of a mutual in like manner as an appeal, and all those companies shall be entitled to be a party to those proceedings.

(12) If the amount of relevant liabilities does not exceed the value of relevant assets—

- (a) paragraph (10) shall have effect as if for the words following “separate trade,” to the end of the paragraph there were substituted “any necessary apportionment shall be made of receipts or expenses.”; and
- (b) paragraph (11) shall have effect as if for “item” there were substituted “sum”.

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(21) 1988 c 1. Section 393(1) has been amended by paragraph 4 of Schedule 35 to the [Finance Act 2008 \(c. 9\)](#).

(22) Section 393A was inserted by section 75(1) of the [Finance Act 1991 \(c. 31\)](#) and has been relevantly amended by section 39 of the [Finance \(No. 2\) Act 1997 \(c. 58\)](#).

(13) In this regulation—

“relevant assets” means—

- (a) assets vested in the transferor immediately before it ceased to carry on the trade, which were not transferred to the transferee; and
- (b) consideration given to the transferor by the transferee in respect of the relevant transfer or change of the entity carrying on the business as a consequence of the relevant transfer; and for the purposes of sub-paragraph (b) the assumption by the transferee of any liabilities of the transferor shall not be treated as the giving of consideration to the transferor by the transferee;

“relevant liabilities” means liabilities outstanding and vested in the transferor immediately before it ceased to carry on the trade which were not transferred to the transferee; but a liability representing the transferor’s share capital, share premium account, reserves or relevant loan stock is not a relevant liability.

(14) Where the transferor transferred a liability to the transferee but the creditor concerned agreed to accept settlement of part of the liability as settlement of the whole, the liability shall be treated for the purposes of paragraph (13) as not having been transferred to the transferee except as to that part.

(15) For the purposes of paragraph (13), a liability representing the transferor’s share capital, share premium account, reserves or relevant loan stock shall be treated as not doing so, if, in the period of one year ending with the day on which the transferor ceased to carry on the trade, the liability arose on a conversion of a liability not representing its share capital, share premium account, reserves or relevant loan stock.

(16) Where a liability of the transferor representing its relevant loan stock is not a relevant liability for the purposes of paragraph (5) but is secured on an asset of the transferor not yet transferred to the transferee, the value of the asset shall, for the purposes of paragraph (5), be reduced by an amount equal to the amount of the liability.

(17) In this regulation “relevant loan stock” means any loan stock or similar security (whether secured or unsecured) except any in the case of which paragraph (18) applies.

(18) This paragraph applies where, at the time the liability giving rise to the loan stock or other security was incurred, the person who was the creditor was carrying on a trade of lending money.

### **Transfer of an asset – taxation of chargeable gains**

5. If—

- (a) there is a relevant transfer within regulation 3(1)(e); and
- (b) there is a disposal of an asset by the transferor to the transferee,

the transferor and the transferee shall be treated for the purposes of corporation tax in respect of chargeable gains as if the asset were acquired from the transferor for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the transferor.

### **Transfer of an asset – taxation of chargeable gains – company ceasing to be member of group**

6. If—

- (a) there is a relevant transfer within regulation 3(1)(a), (b) or (e);
- (b) the transferor and the transferee are not members of the same group at the time of the relevant transfer; and

- (c) as a result of the relevant transfer, a company ceases to be a member of the same group as the transferor,

section 179 of TCGA (company ceasing to be a member of group: post-appointed day cases)(**23**) shall not apply in respect of any asset acquired by the company referred to in paragraph (c) from the transferor or from any other member of the same group as the transferor.

### **Transfer of an asset – company ceasing to be a member of a group – further provisions**

7.—(1) This regulation applies if there is a relevant transfer within regulation 3(1)(a), (b) or (e).

(2) If this regulation applies and the transferor and the transferee—

- (a) as a result of the relevant transfer become members of the same group; but
- (b) subsequently cease to be members of the same group,

paragraph (3) applies.

(3) If paragraph (2) is satisfied, section 179 of TCGA (company ceasing to be a member of group: post-appointed day cases)(**24**) shall not have effect as respects—

- (a) any asset acquired by the transferee as a consequence of the relevant transfer from the transferor or any other member of the same group; or
- (b) any asset acquired as a consequence of the relevant transfer from the transferor, or any other member of the same group, by any company which is a member of the same group as the transferor at the time of the relevant transfer.

(4) If this regulation applies and, as a result of the relevant transfer, a company which was a member of the same group as the transferor at the time of the relevant transfer—

- (a) ceases to be a member of that group;
- (b) becomes a member of the same group as the transferee; and
- (c) subsequently ceases to be a member of that group,

section 179 of TCGA shall have effect when the company ceases to be a member of the same group as the transferee as respects any relevant asset acquired by that company otherwise than from the transferee as if that asset had been acquired from the transferee.

This paragraph is subject to paragraph (6).

(5) In paragraph (4) “relevant asset” means any asset acquired by the company referred to in that paragraph from—

- (a) the transferor; or
- (b) any other company which is a member of the same group as the transferor at the time of the relevant transfer,

when the company referred to in that paragraph and the transferor, or the company referred to in that paragraph, the transferor and the other company, were members of the same group.

(6) Paragraph (4) shall not apply if the company referred to in that paragraph which acquired that asset and the company from which that asset was acquired (one being a 75 per cent subsidiary of the other) cease simultaneously to be members of the same group as the transferee but continue to be members of the same group as one another.

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(23) 1992 c. 12.

(24) Section 179 has been amended by section 49 of the [Finance Act 1995 \(c. 4\)](#); by paragraphs 8 and 9 of Schedule 7 to the [Finance \(No. 2\) Act 1997](#); by sections 133(2), 135(3) and 139 of the [Finance Act 1998 \(c. 36\)](#); by paragraph 4 of Schedule 29 to the [Finance Act 2000 \(c. 17\)](#); by paragraph 2 of Schedule 8 to the [Finance Act 2002 \(c. 23\)](#); by paragraph 2 of Schedule 27 to the [Finance Act 2003 \(c. 14\)](#) and by [S.I. 2007/3186](#).

## **Transfer of loan relationship or derivative contract**

8.—(1) This regulation applies if—

- (a) there is a relevant transfer by a building society;
- (b) the transferor has consistently applied appropriate accounting treatment in accordance with generally accepted accounting practice up to and including the date of the relevant transfer in respect of all loan relationships and derivative contracts shown in its balance sheet; and
- (c) as a result of the relevant transfer the transferee directly or indirectly replaces the transferor as a party to—
  - (i) the loan relationships; or
  - (ii) the derivative contracts.

(2) The transferee shall bring into account, in accordance with paragraphs (3) to (15), amounts in respect of the transfer adjustment.

(3) The “transfer adjustment” is the difference, if any, that arises on a comparison of the closing accounting balance sheet figure, adjusted for tax as appropriate, in respect of the loan relationships or the derivative contracts in the transferor’s accounts and the opening accounting balance sheet figure, adjusted for tax as appropriate, in respect of the loan relationships or derivative contracts in the transferee’s accounts.

(4) If the transferor carries out simultaneous relevant transfers of its business, within regulation 3(1)(c) of part of its business the “transfer adjustment” in respect of each transferee is to be computed by reference to the difference between the opening accounting balance sheet figure, adjusted for tax as appropriate, for the transferred loan relationships and derivative contracts in each transferee’s accounts and the closing accounting balance sheet figure, adjusted for tax as appropriate, for those same loan relationships and derivative contracts in the transferor’s accounts.

(5) For the purposes of paragraphs (3) and (4), where, in the Tax Acts, an accounting balance sheet figure is adjusted for tax, it is that adjusted figure that is to be used when calculating the transfer adjustment.

(6) The credits and debits to be brought into account as profits or deficits or losses for the purposes of Part 3, 5, 6 or 7 of CTA(25) in respect of the transferee’s transfer adjustment shall be determined in accordance with this regulation.

(7) The transferee shall bring one-sixth of the transfer adjustment (“the applicable amount”) into account for each year of a six year period (“the prescribed period”) beginning with the day on which the relevant transfer takes place. This is subject to paragraphs (8), (10) and (16).

(8) If there are two or more accounting periods falling in a year, the applicable amount for the year shall be apportioned between the accounting periods.

(9) An apportionment between accounting periods of an applicable amount in accordance with paragraph (8) shall be made according to the proportion of the year which is included in each accounting period.

(10) If the transferee ceases to be within the charge to corporation tax before the end of the prescribed period, the whole of the applicable amounts, so far as they have not been brought into account in an earlier accounting period, shall be brought into account as a credit or debit for the period ending when the transferee ceases to be within that charge. This paragraph is subject to paragraph (11).

(11) If before the end of the prescribed period—

(a) the transferee transfers the business by way of a relevant transfer within regulation 3(1) (a) or (b) to a successor building society (“A”); and,

(b) as a result of the transfer, the transferee ceases to be within the charge to corporation tax, that relevant transfer will not cause the whole of the applicable amounts, so far as they have not been brought into account in an earlier period, to be brought into account for the period in which that relevant transfer takes place.

(12) Where there is a relevant transfer to which paragraph (11) applies, paragraph (7) will apply to the applicable amounts which have not been brought into account by the transferee as if references to “the transferee” were references to “A”.

(13) If this regulation applies and the transferor has been bringing debits and credits into account in accordance with regulation 3A of the Loan Relationships and Derivative Contracts (Change of Accounting Practice) Regulations 2004<sup>(26)</sup>, the relevant transfer shall be treated for the purposes of regulation 3A(6) of those Regulations as though it were a qualifying transfer.

(14) In paragraph (1)(c) the reference to “the transferee directly or indirectly replaces the transferor as a party” has the same meaning given by—

- (a) regulation 10 in the case of a loan relationship; and
- (b) regulation 11 in the case of a derivative contract.

(15) Paragraph (7) does not apply if the transferee has made an election under paragraph (16).

(16) If the amount of the transfer adjustment does not exceed £1.5 million, the transferee may elect to bring into account the full amount of the transfer adjustment in the accounting period in which the relevant transfer takes place.

(17) An election under paragraph (16)—

- (a) must be made—
  - (i) by notice in writing to an officer of Revenue and Customs; and
  - (ii) no later than 12 months after the end of the accounting period in which the relevant transfer took place;
- (b) must specify the amount of the transfer adjustment; and
- (c) is irrevocable.

(18) In this regulation—

“generally accepted accounting practice” has the meaning given by section 50(1) of FA 2004 (generally accepted accounting practice)<sup>(27)</sup>;

“officer of Revenue and Customs” has the meaning given by section 2 of the Commissioners for Revenue and Customs Act 2005 (officers of revenue and customs)<sup>(28)</sup>.

### **Transfer of loan relationship or derivative contract – further provisions**

9.—(1) This regulation applies if—

- (a) there is a relevant transfer within regulation 3(1)(a), (b), (d) or (e); and
- (b) before the date of the relevant transfer there had been a transfer to a company of—
  - (i) a loan relationship to which section 336 of CTA (transfers of loans on group transactions) applied; or

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<sup>(26)</sup> S.I. 2004/3271. Regulation 3A was inserted by S.I. 2005/3383 and amended by S.I. 2007/3432 and 2008/3237.

<sup>(27)</sup> 2004 c. 12. Section 50(1) was amended by paragraphs 456 and 457 of Schedule 1 to the [Income Tax Act 2007 \(c. 3\)](#).

<sup>(28)</sup> 2005 c. 11.

(ii) a derivative contract to which section 625 of CTA (group member replacing another as party to a derivative contract) applied;

but this is subject to paragraph (6).

(2) Paragraph (3) applies if, as a result of the relevant transfer, the company referred to in paragraph (1)(b) ceases to be a member of the same group as the transferor—

(a) before the end of the relevant six year period referred to in—

(i) section 344(4) of CTA (transferee leaving group after replacing transferor as party to loan relationship); or

(ii) section 630(4) of CTA (introduction to sections 631 and 632); and

(b) whilst still a party to the relevant loan relationship or derivative contract.

(3) If paragraph (2) is satisfied—

(a) the company referred to in paragraph (1)(b) shall be treated as not having ceased to be a member of the same group as the transferor;

(b) in the case of a loan relationship, section 345 of CTA (transferee leaving group otherwise than because of an exempt distribution) shall not apply to the loan relationship as a result of the relevant transfer; and

(c) in the case of a derivative contract, section 631 of CTA (transferee leaving group otherwise than because of exempt distribution) shall not apply to the derivative contract as a result of the relevant transfer.

(4) Paragraph (5) applies if the company referred to in paragraph (1)(b) ceases to be a member of the same group as the transferee—

(a) before the end of the relevant six year period referred to in—

(i) section 344(4) of CTA (transferee leaving group after replacing transferor as party to loan relationship); or

(ii) section 630(4) of CTA (introduction to sections 631 and 632); and

(b) whilst still a party to the relevant loan relationship or derivative contract.

(5) If paragraph (4) is satisfied—

(a) in the case of a loan relationship, section 345 of CTA (transferee leaving group otherwise than because of an exempt distribution) shall apply to the loan relationship as a result of the relevant transfer; and

(b) in the case of a derivative contract, section 631 of CTA (transferee leaving group otherwise than because of exempt distribution) shall apply to the derivative contract as a result of the relevant transfer.

(6) This regulation does not apply where a transferor of a loan relationship is regarded as using fair value accounting in respect of that loan relationship.

(7) A transferor shall be regarded for the purposes of this regulation as using fair value accounting in respect of a loan relationship only if the credits and debits to be brought into account for the purposes of these Regulations as respects that loan relationship are determined on that basis.

(8) It does not matter for the purposes of paragraph (7) if the transferor does not otherwise use fair value accounting in respect of the loan relationship.

### **Meaning of transferee replacing building society as party to a loan relationship**

**10.**—(1) References in regulation 8 to a transferee replacing a transferor as a party to a loan relationship include references to a transferee becoming party to a loan relationship which—

- (a) confers rights within paragraph (2);
- (b) imposes obligations within paragraph (2); or
- (c) both confers such rights and imposes such obligations.

(2) Rights or obligations are within this paragraph if they are equivalent to those of the transferor under a loan relationship to which that transferor has ceased to be a party as a result of the relevant transfer.

(3) For the purposes of paragraph (2), a transferor's rights under a creditor relationship are equivalent to rights under another creditor relationship if each set of rights gives the holder of an asset representing the relationship in question—

- (a) the same rights against the same persons as to capital, interest and dividends; and
- (b) the same remedies to enforce those rights.

(4) For the purposes of paragraph (3), any difference in—

- (a) the total nominal amounts of the assets representing each loan relationship;
- (b) the form in which they are held; or
- (c) the way in which they can be transferred,

is ignored.

(5) For the purposes of paragraph (2), a transferee's obligations under a debtor relationship are equivalent to obligations under another debtor loan relationship if under each set of obligations the holder of the liability representing the loan relationship in question has—

- (a) the same obligations to the same persons as to capital, interest and dividends; and
- (b) the same remedies to enforce those obligations.

(6) For the purposes of paragraph (5), any difference in—

- (a) the total nominal amounts of the assets representing the creditor loan relationship corresponding to each relationship;
- (b) the form in which they are held; or
- (c) the way in which they can be transferred,

is ignored.

### **Meaning of transferee replacing building society as a party to a derivative contract**

**11.**—(1) References in regulation 8 to a transferee replacing a transferor as a party to a derivative contract include references to the transferee becoming party to a derivative contract which—

- (a) confers rights within paragraph (2);
- (b) imposes obligations within paragraph (2); or
- (c) both confers such rights and imposes such obligations.

(2) Rights or obligations are within this paragraph if they are equivalent to those of the transferor under a derivative contract to which that transferor has ceased to be a party as a result of the relevant transfer.

### **Transfer of intangible fixed assets**

**12.**—(1) This regulation applies if—

- (a) there is a relevant transfer within regulation 3(1)(e) which includes intangible fixed assets;
- (b) those assets are chargeable intangible assets in relation to the transferor immediately before the relevant transfer; and

- (c) those assets are chargeable intangible assets in relation to the transferee immediately after the relevant transfer.
- (2) The transfer of those assets is tax-neutral for the purposes of—
  - (a) these Regulations; and
  - (b) Part 8 of CTA (intangible fixed assets).
- (3) For the application of sections 780 (deemed realisation and reacquisition at market value) and 785 (principal company becoming member of another group) of CTA where this regulation applies, see regulation 13.
- (4) This regulation and regulations 13 and 14 apply to goodwill as they apply to intangible fixed assets.

### **Transfer of intangible fixed assets – further provisions**

- 13.**—(1) This regulation applies if—
- (a) there is a relevant transfer within regulation 3(1)(a), (b) or (e) which includes intangible fixed assets;
  - (b) those assets are—
    - (i) chargeable intangible assets in relation to the transferor immediately before the relevant transfer; and
    - (ii) chargeable intangible assets in relation to the transferee immediately after the relevant transfer; and
  - (c) the transfer of those assets is tax-neutral for the purposes of these Regulations or Part 8 of CTA (intangible fixed assets).
- (2) If because of the relevant transfer a company ceases to be a member of the same group as the transferor, that event does not cause—
- (a) section 780 of CTA (deemed realisation and reacquisition at market value); or
  - (b) section 785 of that Act (principal company becoming member of another group),
- to apply as respects any assets acquired by the company from the transferor or any other member of the same group as the transferor.
- (3) If the transferor and transferee are members of the same group at the time of the relevant transfer but later cease to be, that later event does not cause section 780 or 785 of CTA to apply in relation to any asset to which this regulation applies.
- (4) Paragraph (3) applies to—
- (a) any asset acquired by the transferee on or before the relevant transfer from the transferor, or from any other member of the same group; or
  - (b) any asset acquired from the transferor or from any other member of the same group by a company (other than the transferee) that is a member of that group at the time of the relevant transfer.
- (5) Paragraph (6) applies if a company which is a member of the same group as the transferor at the time of the relevant transfer—
- (a) ceases to be a member of that group and becomes a member of the same group as the transferee, and
  - (b) later ceases to be a member of that group.
- (6) Section 780 of CTA (deemed realisation and reacquisition at market value) applies on that later event as if any asset to which this paragraph applies that has not been acquired from the transferee had been so acquired.

- (7) Paragraph (6) applies to—
- (a) any asset acquired by the company referred to in paragraph (5) from the transferor when that company and the transferor were members of the same group, or
  - (b) any asset acquired by the company referred to in paragraph (5) from another company which is a member of the same group at the time of the relevant transfer when the company referred to in paragraph (5), the transferor and the other company were members of the same group.
- (8) Paragraph (6) does not apply if—
- (a) the company which acquired the asset is a 75% subsidiary of the company from which it was acquired or vice versa;
  - (b) those companies cease simultaneously to be members of the same group as the transferee; and
  - (c) those companies continue to be members of the same group as one another.

### **Intangible fixed assets transferred as if at no gain or no loss**

- 14.**—(1) This regulation applies if—
- (a) there is a relevant transfer by a building society; and
  - (b) the transferor is treated—
    - (i) for the purposes of these Regulations; or
    - (ii) by virtue of the provisions referred to in paragraph (2),as disposing of any assets for a consideration of such amount as would secure that neither a gain nor a loss would accrue to the transferor on that disposal.
- (2) The provisions referred to in this paragraph are—
- (a) section 215 of TCGA (disposal of assets on amalgamation of building societies)**(29)**; and
  - (b) section 216 of that Act (assets transferred from society to company)**(30)**.
- (3) The assets, in the hands of the transferee, shall be treated as not satisfying the general rule set out in section 882(1) of CTA (application of Part 8 to assets created or acquired on or after 1 April 2002)**(31)**.

## **PART 3**

### **INDUSTRIAL AND PROVIDENT SOCIETIES**

#### **Interpretation**

- 15.** In this Part—
- “carrying value” has the meaning given by section 317 of CTA (carrying value)**(32)**;
  - “discount” has the meaning given by section 480(5) of CTA (relevant non-lending relationships involving discounts);

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**(29)** 1992 c. 12.

**(30)** Section 216 has been amended by Part 2(12) of Schedule 40 to the [Finance Act 2000 \(c. 17\)](#).

**(31)** 2009 c. 4.

**(32)** Section 317 has been amended by paragraph 2(7) of Schedule 30 to the [Finance Act 2009 \(c. 10\)](#).

“notional carrying value” in relation to an asset or liability has the same meaning as it has for section 340(6) of CTA (group transfers and transfers of insurance business: transfer at notional carrying value).

### **Transfer of an asset – taxation of chargeable gains**

16. If—

- (a) there is a relevant transfer within regulation 3(2)(d), (e) or (f); and
- (b) there is a disposal of an asset by the transferor to the transferee,

the transferor and the transferee shall be treated for the purposes of corporation tax in respect of chargeable gains as if the asset were acquired from the transferor for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the transferor.

### **Transfer of an asset – taxation of chargeable gains – company ceasing to be a member of group**

17. If—

- (a) there is a relevant transfer within regulation 3(2)(a), (b), (d), (e) or (f);
- (b) the transferor and the transferee are not members of the same group at the time of the relevant transfer; and
- (c) as a result of the relevant transfer, a company ceases to be a member of the same group as the transferor,

section 179 of TCGA (company ceasing to be a member of group: post-appointed day cases)(33) shall not apply in respect of any asset acquired by the company referred to in paragraph (c) as a consequence of the relevant transfer from the transferor or from any other member of the same group as the transferor.

### **Transfer of an asset – company ceasing to be a member of a group – further provisions**

18.—(1) This regulation applies if there is a relevant transfer within regulation 3(2)(a), (b), (d), (e) or (f).

(2) If there is a relevant transfer to which this regulation applies, and the transferor and the transferee —

- (a) are members of the same group at the time of the relevant transfer; but
- (b) subsequently cease to be members of the same group,

paragraph (3) applies.

(3) If paragraph (2) is satisfied, section 179 of TCGA (company ceasing to be a member of group: post-appointed day cases) shall not have effect as respects—

- (a) any asset acquired by the transferee as a consequence of the relevant transfer from the transferor or any other member of the same group; or
- (b) any asset acquired as a consequence of the transfer from the transferor, or any other member of the same group, by any company which is a member of the same group as the transferor at the time of the relevant transfer.

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(33) Section 179 has been amended by section 49 of the [Finance Act 1995 \(c. 4\)](#); by paragraphs 8 and 9 of Schedule 7 to the [Finance \(No. 2\) Act 1997 \(c. 58\)](#); by sections 133(2), 135(3) and 139 of the [Finance Act 1998 \(c. 36\)](#); by paragraph 4 of Schedule 29 to the [Finance Act 2000](#); by paragraph 2 of Schedule 8 to the [Finance Act 2002 \(c. 23\)](#); by paragraph 2 of Schedule 27 to the [Finance Act 2003 \(c. 14\)](#) and by [S.I. 2007/3186](#).

(4) If this regulation applies and, as a result of the relevant transfer, a company which was a member of the same group as the transferor at the time of the relevant transfer—

- (a) ceases to be a member of that group;
- (b) becomes a member of the same group as the transferee; and
- (c) subsequently ceases to be a member of that group,

section 179 of TCGA shall have effect when the company ceases to be a member of the same group as the transferee as respects any relevant asset acquired by that company otherwise than from the transferee as if that asset had been acquired from the transferee.

This paragraph is subject to paragraph (6).

(5) In paragraph (4) “relevant asset” means any asset acquired by the company referred to in that paragraph from—

- (a) the transferor; or
- (b) any other company which is a member of the same group as the transferor at the time of the relevant transfer,

when the company referred to in that paragraph and the transferor, or the company referred to in that paragraph, the transferor and the other company, were members of the same group.

(6) Paragraph (4) shall not apply if the company referred to in that paragraph which acquired that asset and the company from which that asset was acquired (one being a 75 per cent subsidiary of the other) cease simultaneously to be members of the same group as the transferee but continue to be members of the same group as one another.

### **Transfer of loan relationship**

19.—(1) Subject to paragraph (7), this regulation applies if—

- (a) there is a relevant transfer by an industrial and provident society; and
- (b) as a result of that transfer, the transferee directly or indirectly replaces the transferor as a party to a loan relationship (as to which see regulation 20).

(2) The credits and debits to be brought into account for the purposes of Parts 3, 5 and 6 of CTA as a result of the relevant transfer shall be determined in accordance with paragraphs (3) to (10).

(3) Subject to paragraph (5), for the accounting period in which the relevant transfer takes place, the transferor shall be treated as having entered into the relevant transfer for consideration of an amount equal to the notional carrying value of the asset or liability representing the loan relationship at the time of the relevant transfer.

(4) For any accounting period in which the transferee is a party to the loan relationship, the transferee shall be treated as if it had acquired the asset or liability representing the loan relationship for consideration of an amount equal to the notional carrying value of the asset or liability in the accounts of the transferor at the time of the relevant transfer.

(5) If a discount arises in respect of the relevant transfer, the consideration referred to in paragraph (3) shall be treated as increased by the amount of that discount.

(6) Schedule 28AA to ICTA (provision not at arm’s length)<sup>(34)</sup> does not apply in relation to the amounts in respect of which credits or debits are to be brought into account under this regulation.

(7) This regulation does not apply where the transferor is regarded as using fair value accounting in respect of the loan relationship (as to which see regulation 21).

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<sup>(34)</sup> 1988 c. 1. Schedule 28AA was inserted by Schedule 16 to the [Finance Act 1998 \(c. 36\)](#).

(8) The transferor shall be regarded for the purposes of this Part as using fair value accounting in respect of a loan relationship only if the credits and debits to be brought into account for the purposes of these Regulations as respects the relationship are determined on that basis.

(9) It does not matter for the purposes of paragraph (8) if the transferor does not otherwise use fair value accounting in respect of the loan relationship.

(10) For the purposes of this regulation, subsection (5) of section 480 of CTA (relevant non-lending relationships involving discounts) applies as it applies for the purposes of that section.

(11) This regulation is subject to—

- (a) section 332 of CTA (repo, stock lending and other transactions); and
- (b) regulation 26.

### **Meaning of transferee replacing transferor as a party to a loan relationship**

**20.**—(1) References in regulation 19 to a transferee replacing a transferor as a party to a loan relationship include references to a transferee becoming party to a relationship which—

- (a) confers rights within paragraph (2);
- (b) imposes obligations within paragraph (2); or
- (c) both confers such rights and imposes such obligations.

(2) Rights or obligations are within this paragraph if they are equivalent to those of the transferor under a loan relationship to which that transferor ceased to be a party as a result of the relevant transfer.

(3) For the purposes of paragraph (2), a transferor's rights under a creditor relationship are equivalent to rights under another creditor relationship if each set of rights gives the holder of an asset representing the relationship in question—

- (a) the same rights against the same persons as to capital, interest and dividends; and
- (b) the same remedies to enforce those rights.

(4) For the purposes of paragraph (3), any difference in—

- (a) the total nominal amounts of the assets representing each relationship;
- (b) the form in which they are held; or
- (c) the way in which they can be transferred,

is ignored.

(5) For the purposes of paragraph (2), a transferee's obligations under a debtor relationship are equivalent to obligations under another debtor relationship if under each set of obligations the holder of the liability representing the relationship in question has—

- (a) the same obligations to the same persons as to capital, interest and dividends; and
- (b) the same remedies to enforce those obligations.

(6) For the purposes of paragraph (5), any difference in—

- (a) the total nominal amounts of the assets representing the creditor relationship corresponding to each relationship;
- (b) the form in which they are held; or
- (c) the way in which they can be transferred,

is ignored.

### **Transfer of loan relationship where fair value accounting is used**

21.—(1) This regulation applies if regulation 19 would apply but for the fact that the transferor is regarded as using fair value accounting in respect of the loan relationship.

(2) The credits and debits to be brought into account for the purposes of Parts 3, 5 and 6 of CTA as a result of the relevant transfer shall be determined in accordance with paragraphs (3) to (5).

(3) The amount which is to be brought into account by the transferor in respect of the relevant transfer (“the transferor’s amount”) is—

(a) if the amount relates to an asset, either—

(i) the fair value of the asset as at the date when the transferee becomes party to the loan relationship; or

(ii) the fair value of the rights under or interest in the loan relationship as at that date; and

(b) if the amount relates to a liability, the fair value of the liability as at that date.

(4) Subject to paragraph (5), for any accounting period in which the transferee is a party to the loan relationship, for the purpose of determining the credits and debits to be brought into account in respect of the relationship for the purposes of these Regulations, the transferee shall be treated as if it had acquired the asset or liability representing the relationship for consideration of an amount equal to the transferor’s amount.

(5) If a discount arises in respect of the transfer, the transferor’s amount shall be treated as increased by the amount of the discount.

(6) This regulation is subject to—

(a) section 332 of CTA (repo, stock lending and other transactions); and

(b) regulation 26.

### **Replacement of industrial and provident society as party to a derivative contract**

22.—(1) Subject to paragraph (7), this regulation applies if—

(a) there is a relevant transfer by an industrial and provident society; and

(b) as a result of that transfer the transferee directly or indirectly replaces the transferor as a party to a derivative contract (as to which see regulation 23).

(2) The credits and debits to be brought into account for the purposes of Part 3 or 7 of CTA as a result of the relevant transfer shall be determined in accordance with paragraphs (3) to (6).

(3) Subject to paragraph (5), for the accounting period in which the relevant transfer takes place, the transferor shall be treated as having entered into the derivative contract for consideration of an amount equal to the notional carrying value of that contract (as to which see paragraph (8)).

(4) For any accounting period in which the transferee is a party to the derivative contract, the transferee shall be treated as if it had acquired that derivative contract for consideration of an amount equal to the notional carrying value of that contract in the accounts of the transferor (as to which see paragraph (8)).

(5) If a discount arises in respect of the relevant transfer, the consideration referred to in paragraph (3) shall be treated for the purposes of that paragraph as increased by the amount of the discount.

(6) Schedule 28AA to ICTA (provision not at arm’s length) does not apply in relation to the amounts in respect of which credits or debits are to be brought into account under this regulation.

(7) This regulation does not apply where the transferor is regarded as using fair value accounting in respect of the derivative contract (as to which see regulation 24).

(8) For the purposes of this regulation the notional carrying value of a derivative contract is the amount which would have been its carrying value in the accounts of the transferor if a period of account had ended immediately before the date on which the transferor had ceased to be a party to that derivative contract.

(9) For the purposes of this regulation, subsection (5) of section 480 of CTA (relevant non-lending relationships involving discounts)(35) applies as it applies for the purposes of that section.

(10) This regulation is subject to regulation 27.

### **Meaning of transferee replacing transferor as party to a derivative contract**

**23.**—(1) References in regulation 22 to a transferee replacing a transferor as a party to a derivative contract include references to the transferee becoming party to a derivative contract which—

- (a) confers rights within paragraph (2),
- (b) imposes liabilities within paragraph (2), or
- (c) both confers such rights and imposes such liabilities.

(2) Rights or liabilities are within this paragraph if they are equivalent to those of the transferor under a derivative contract to which the transferor has ceased to be a party as a result of the relevant transfer.

### **Transfer of derivative contract where fair value accounting is used**

**24.**—(1) This regulation applies in a case where regulation 22 would apply but for the fact that the transferor is regarded as using fair value accounting as respects the derivative contract.

(2) Subject to paragraph (4), the amount which is to be brought into account by the transferor in respect of a relevant transfer is the fair value of the derivative contract as at the date of that transfer.

(3) For any accounting period in which the transferee is a party to the derivative contract, for the purpose of determining the credits and debits to be brought into account in respect of the contract for the purposes of these Regulations, the transferee shall be treated as if it had acquired the contract for consideration of an amount equal to the fair value of the contract as at the date of the transfer.

(4) If a discount arises in respect of the relevant transfer, the amount to be brought into account under paragraph (2) shall be treated as increased by the amount of the discount.

(5) For the purposes of this regulation, subsection (5) of section 480 of CTA (relevant non-lending relationships involving discounts) applies as it applies for the purposes of that section.

(6) This regulation is subject to regulation 27.

### **Transfer of loan relationship or derivative contract – further provisions**

**25.**—(1) This regulation applies if—

- (a) there is a relevant transfer within regulation 3(2)(a), (b), (d), (e) or (f); and
- (b) before the date of the relevant transfer there had been a transfer to a company of—
  - (i) a loan relationship to which section 336 of CTA (transfers of loans on group transactions) applied; or
  - (ii) a derivative contract to which section 625 of CTA (group member replacing another as party to derivative contract) applied,

but this is subject to paragraph (6).

- (2) Paragraph (3) applies if as a result of the relevant transfer the company referred to in paragraph (1)(b) ceases to be a member of the same group as the transferor—
- (a) before the end of the relevant six year period referred to in—
    - (i) section 344(4) of CTA (transferee leaving group after replacing transferor as party to loan relationship); or
    - (ii) section 630(4) of CTA (introduction to sections 631 and 632); and
  - (b) whilst still a party to the relevant loan relationship or derivative contract.
- (3) If paragraph (2) is satisfied—
- (a) the company referred to in paragraph (1)(b) shall be treated as not having ceased to be a member of the same group as the transferor;
  - (b) in the case of a loan relationship, section 345 of CTA (transferee leaving group otherwise than because of exempt distribution) shall not apply to the loan relationship as a result of the relevant transfer; and
  - (c) in the case of a derivative contract, section 631 of CTA (transferee leaving group otherwise than because of exempt distribution) shall not apply to the derivative contract as a result of the relevant transfer.
- (4) Paragraph (5) applies if the company referred to in paragraph (1)(b) ceases to be a member of the same group as the transferee—
- (a) before the end of the relevant six year period referred to in—
    - (i) section 344(4) of CTA (transferee leaving group after replacing transferor as party to loan relationship); or
    - (ii) section 630(4) of CTA (introduction to sections 631 and 632); and
  - (b) whilst still a party to the relevant loan relationship or derivative contract.
- (5) If paragraph (4) is satisfied—
- (a) in the case of a loan relationship, section 345 of CTA (transferee leaving group otherwise than because of exempt distribution) shall apply to the loan relationship as a result of the relevant transfer; and
  - (b) in the case of a derivative contract, section 631 of CTA (transferee leaving group otherwise than because of exempt distribution) shall apply to the derivative contract as a result of the relevant transfer.
- (6) This regulation does not apply where the transferor of a loan relationship is regarded as using fair value accounting in respect of that loan relationship.
- (7) The transferor shall be regarded for the purposes of this Part as using fair value accounting in respect of a loan relationship only if the credits and debits to be brought into account for the purposes of these Regulations as respects that loan relationship are determined on that basis.
- (8) It does not matter for the purposes of paragraph (7) if the transferor does not otherwise use fair value accounting in respect of the loan relationship.
- (9) This regulation is subject to—
- (a) regulation 26 if there has been a transfer of a loan relationship to which section 336 of CTA (transfers of loans on group transactions) applied; or
  - (b) regulation 27 if there has been a transfer of a derivative contract to which section 625 of CTA (group member replacing another as party to a derivative contract) applied.

#### **Transferor of loan relationship is party to avoidance**

**26.**—(1) Regulations 19, 21 and 25 do not apply if conditions A and B are met.

(2) Condition A is that the transferor is a party to arrangements under which there is likely to be a transfer of rights or liabilities under the loan relationship by the transferee to another person in circumstances in which—

- (a) sections 336 and 340 of CTA; or
- (b) regulation 19, 21 or 25,

would not apply.

(3) Condition B is that the purpose, or one of the main purposes, of the arrangements is to obtain a tax advantage for the transferor or a person connected with the transferor.

(4) In this regulation “transfer” includes any arrangement which equates in substance to a transfer.

#### **Transferor of derivative contract is party to avoidance**

27.—(1) Regulations 22, 24 and 25 do not apply if conditions A and B are met.

(2) Condition A is that the transferor is a party to arrangements under which there is likely to be a transfer of rights or liabilities under the derivative contract by the transferee to another person in circumstances in which—

- (a) section 625 of CTA; or
- (b) regulation 22, 24 or 25,

would not apply.

(3) Condition B is that the purpose, or one of the main purposes, of the arrangements is to obtain a tax advantage for the transferor or a person connected with the transferor.

(4) In this regulation “transfer” includes any arrangement which equates in substance to a transfer.

#### **Transfer of intangible fixed assets**

28.—(1) This regulation applies if—

- (a) there is a relevant transfer within regulation 3(2)(a), (b), (d), (e) or (f) which includes intangible fixed assets;
- (b) those assets are chargeable intangible assets in relation to the transferor immediately before the relevant transfer; and
- (c) those assets are chargeable intangible assets in relation to the transferee immediately after the relevant transfer.

(2) The transfer of those assets is tax-neutral for the purposes of—

- (a) these Regulations; and
- (b) Part 8 of CTA (intangible fixed assets).

(3) For the application of sections 780 (deemed realisation and reacquisition at market value) and 785 (principal company becoming member of another group) of CTA where this regulation applies, see regulation 29.

(4) This regulation and regulations 29 and 30 apply to goodwill as they apply to intangible fixed assets.

#### **Transfer of intangible fixed assets – further provisions**

29.—(1) This regulation applies if—

- (a) there is a relevant transfer within regulation 3(2)(a), (b), (d), (e) or (f) which includes intangible fixed assets;

- (b) those assets are—
    - (i) chargeable intangible assets in relation to the transferor immediately before the relevant transfer; and
    - (ii) chargeable intangible assets in relation to the transferee immediately after the relevant transfer; and
  - (c) the transfer is tax-neutral for the purposes of these Regulations or Part 8 of CTA (intangible fixed assets).
- (2) If because of the relevant transfer a company ceases to be a member of the same group as the transferor, that event does not cause—
- (a) section 780 of CTA (deemed realisation and reacquisition at market value); or
  - (b) section 785 of that Act (principal company becoming member of another group),
- to apply as respects any assets acquired by the company from the transferor or any other member of the same group as the transferor.
- (3) If the transferor and transferee are members of the same group at the time of the relevant transfer but later cease to be, that later event does not cause section 780 or 785 of CTA to apply in relation to any asset to which this regulation applies.
- (4) Paragraph (3) applies to—
- (a) any asset acquired by the transferee on or before the relevant transfer from the transferor, or from any other member of the same group; or
  - (b) any asset acquired from the transferor or from any other member of the same group by a company (other than the transferee) that is a member of that group at the time of the relevant transfer.
- (5) Paragraph (6) applies if a company which is a member of the same group as the transferor at the time of the relevant transfer—
- (a) ceases to be a member of that group and becomes a member of the same group as the transferee, and
  - (b) later ceases to be a member of that group.
- (6) Section 780 of CTA (deemed realisation and reacquisition at market value) applies on that later event as if any asset to which this paragraph applies that has not been acquired from the transferee had been so acquired.
- (7) Paragraph (6) applies to—
- (a) any asset acquired by the company referred to in paragraph (5) from the transferor when that company and the transferor were members of the same group; or
  - (b) any asset acquired by the company referred to in paragraph (5) from another company which is a member of the same group at the time of the relevant transfer when the company referred to in paragraph (5), the transferor and the other company were members of the same group.
- (8) Paragraph (6) does not apply if—
- (a) the company which acquired the asset is a 75% subsidiary of the company from which it was acquired or vice versa;
  - (b) those companies cease simultaneously to be members of the same group as the transferee; and
  - (c) those companies continue to be members of the same group as one another.

### **Intangible fixed assets transferred as if at no gain or no loss**

**30.**—(1) This regulation applies if—

- (a) there is a relevant transfer by an industrial and provident society; and
- (b) the transferor is treated—
  - (i) for the purposes of these Regulations; or
  - (ii) by virtue of section 486 of ICTA (industrial and provident societies and co-operative associations)(**36**),
 as disposing of any assets for a consideration of such amount as would secure that neither a gain nor a loss would accrue to the transferor on that disposal.

(2) The assets, in the hands of the transferee, shall be treated as not satisfying the general rule set out in section 882(1) of CTA (application of Part 8 to assets created or acquired on or after 1 April 2002)(**37**).

### **Exemption from stamp duty land tax**

**31.** A land transaction made in connection with a relevant transfer within regulation 3(2)(b), (c), (d), (e) or (f) shall be exempt from charge under Part 4 of FA 2003(**38**).

### **Exemption from stamp duty**

**32.** Any instrument, document or agreement required to give effect to a relevant transfer by an industrial and provident society shall not be chargeable to stamp duty under the Stamp Act 1891(**39**).

## **PART 4**

### **FURTHER PROVISIONS RELATING TO RELEVANT TRANSFERS**

#### **Stamp duty land tax – group relief**

**33.**—(1) Paragraph 3 of Schedule 7 to FA 2003 (withdrawal of group relief)(**40**) does not apply if—

- (a) there is a relevant transfer;
- (b) before the date of that relevant transfer there had been a land transaction to which Part 1 of Schedule 7 to FA 2003 applied; and
- (c) as a result of that relevant transfer, the purchaser in relation to the land transaction referred to in sub-paragraph (b) ceases to be a member of the same group as the transferor—
  - (i) before the end of the period of three years beginning with the effective date of that land transaction; or
  - (ii) in pursuance of, or in connection with, arrangements made before the end of that three year period.

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(36) 1988 c. 1. Section 486 has been amended by paragraph 188 of Schedule 1 and Schedule 3 to the [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#); by paragraph 90 of Schedule 1 and Part 1 of Schedule 3 to the [Income Tax Act 2007 \(c. 3\)](#); by sections 1322 and 1326 of, and paragraph 163 of Schedule 1 and Part 1 of Schedule 3 to, the [Corporation Tax Act 2009 \(c. 4\)](#) and by [S.I. 2002/794](#).

(37) 2009 c. 4.

(38) 2003 c. 14.

(39) 1891 c. 39.

(40) 2003 c. 14. Paragraph 3(2) was substituted by paragraph 4(a) of Schedule 10 to the [Finance \(No 2\) Act 2005 \(c. 22\)](#).

(2) In this regulation, references to a company being a member of a group of companies are to be read in accordance with paragraph 1 of Schedule 7 to FA 2003(41).

### **Transitional provision**

**34.**—(1) This regulation applies if a relevant transfer takes place on or after 22 April 2009 but before the date on which these Regulations come into force.

(2) Subject to paragraph (4) nothing in these Regulations shall have effect so as to—

- (a) impose a charge to tax (or increase a charge to tax) on a party to the relevant transfer;
- (b) reduce a relief from tax, including a tax credit, available to a party to the relevant transfer; or
- (c) reduce losses available to a party to the relevant transfer;

where that charge or reduction arises only as a result of the application of these Regulations.

(3) If paragraph (2) applies—

- (a) any charge to tax (or increase in a charge to tax) on a party to the relevant transfer;
- (b) any reduction in relief from tax available to a party to the relevant transfer; or
- (c) any reduction in losses available to a party to the relevant transfer;

shall be disregarded.

(4) Paragraphs (2) and (3) do not apply in relation to—

- (a) any charge to tax (or increase in a charge to tax);
- (b) any reduction in relief from tax; or
- (c) any reduction in losses;

which may arise as a result of anything done or occurring on or after the date on which these Regulations come into force.

### **Arrangements the purpose of which is to secure a tax advantage**

**35.**—(1) This regulation applies if a relevant transfer forms part of an unallowable arrangement.

(2) If paragraph (1) is satisfied the following Cases shall apply.

#### *Case 1*

Case 1 is where as a result of the arrangement any party to the relevant transfer obtains a relief from tax (including a tax credit) or an increased relief from tax.

Where Case 1 applies, the relief from tax, or increased relief from tax, shall not be allowed.

#### *Case 2*

Case 2 is where as a result of the arrangement any party to the relevant transfer obtains a repayment of tax or an increased repayment of tax.

Where Case 2 applies, the repayment of tax, or the increased repayment, shall not be allowed.

#### *Case 3*

Case 3 is where as a result of the arrangement any party to the relevant transfer avoids, reduces or delays a charge or assessment to tax.

Where Case 3 applies, a charge or an assessment to tax may be made upon that party.

#### *Case 4*

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(41) Paragraph 1 has been amended by paragraphs 1 and 3 of Schedule 10 to the Finance (No. 2) Act 2005.

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Case 4 is where as a result of the arrangement any party to the relevant transfer avoids a possible assessment to tax.

Where Case 4 applies, an assessment to tax may be made upon that party.

(3) For the purposes of this regulation an arrangement is an unallowable arrangement where the purpose, or one of the main purposes, of a person in being a party to the relevant transfer is to obtain a tax advantage as a result of that transfer for that person or any other person.

*Tony Cunningham*

*Steve McCabe*

Two of the Lords Commissioners for Her  
Majesty's Treasury

9th November 2009

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

In accordance with section 124 of the Finance Act 2009 these Regulations make provision for and in connection with the tax consequences of a transfer of the business or engagements of a mutual society.

Part 1 of the Regulations contains introductory provisions.

Regulation 1 deals with citation, commencement and effect. Section 124(5) of the Finance Act 2009 provides that provisions having retrospective effect may be made. A number of the Regulations have effect in relation to transfers occurring on or after 22 April 2009.

Regulation 2 contains definitions of terms used in the Regulations.

Regulation 3 defines the term “relevant transfer”.

Part 2 of the Regulations contains regulations 4 to 14 and deals with the treatment of relevant transfers by a building society.

Regulation 4 provides that the Corporation Tax Acts apply where there is a relevant transfer and a trade is transferred, subject to the matters set out in paragraphs (3) to (18).

Regulation 5 provides that where a building society transfers its business to a subsidiary of a mutual society, the disposal of any assets will be treated as a disposal which gives rise to neither a gain nor a loss for the purposes of corporation tax on chargeable gains.

Regulation 6 deals with the treatment of assets in a case where the transferor building society and the recipient of the assets are not members of the same group at the time of the relevant transfer and where, as a result of the transfer, a company leaves the transferor’s chargeable gains group.

Regulation 7 deals with the treatment of assets in a case where the transferor and recipient of the assets became members of the same chargeable gains group but later cease to be members of the same group. Regulation 7 also deals with the case where a company which was a member of the transferor building society’s chargeable gains group becomes a member of the transferee’s group and subsequently ceases to be a member of that group.

Regulation 8 deals with the case where a transferee replaces a transferor building society as a party to a loan relationship or a derivative contract where the closing value in the accounts of the building society in relation to the loan relationship or derivative contract is different from the opening value in the accounts of the transferee. In such a case, the regulation provides that debits or credits in respect of the difference are to be brought into account.

Regulation 9 deals with the case where a loan relationship or derivative contract has been transferred by a building society to a company before a relevant transfer and section 344 or section 630 of the Corporation Tax Act 2009 (“CTA”) (transferee leaving group after replacing transferor as party to loan relationship or derivative contract) applied to that earlier transfer. The relevant transfer will not cause section 345 or section 625 of CTA (transferee leaving a group otherwise than because of an exempt distribution) to apply. Regulation 9 also provides that section 345 or section 625 of CTA will apply if the company ceases to be a member of the same group as the transferee provided that the conditions in paragraph (4) are satisfied.

Regulations 10 and 11 explain when a transferee replaces a building society as a party to a loan relationship or derivative contract for the purposes of regulations 8 and 9.

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Regulation 12 provides that where the specified relevant transfer includes intangible fixed assets or goodwill, the transfer of those assets will be tax-neutral.

Regulation 13 deals with the treatment of intangible fixed assets or goodwill in a case where the transferor building society is a member of a group and, as a result of a relevant transfer, a company to which the intangible fixed assets or goodwill are transferred leaves the group. Regulation 13 also deals with the case where a company which was a member of the transferor building society's group becomes a member of the transferee's group and subsequently ceases to be a member of that group.

Regulation 14 provides that where the transferor building society is treated as disposing of any intangible fixed assets or goodwill such that no gain or loss arises on disposal then, in the hands of the transferee, Part 8 of CTA 2009 (intangible fixed assets) does not apply to the assets.

Part 3 of the Regulations contains regulations 15 to 32 and deals with the treatment of a relevant transfer by an industrial and provident society.

Regulation 15 contains definitions which are specific to Part 3.

Regulation 16 provides that where an industrial and provident society transfers its business under a specified relevant transfer, the disposal of any assets will be treated as a disposal which gives rise to neither a gain nor a loss for the purposes of corporation tax on chargeable gains.

Regulation 17 deals with the treatment of assets where the transferor industrial and provident society and transferee are not members of the same group at the time of the relevant transfer and where, as a result of the transfer, a company leaves the transferor's group.

Regulation 18 deals with the treatment of assets in a case where the transferor industrial and provident society and transferee became members of the same group but later cease to be members of the same group. Regulation 18 also deals with the case where a company which was a member of the transferor industrial and provident society's group becomes a member of the transferee's group and subsequently ceases to be a member of that group.

Regulation 19 deals with the case where a transferee has replaced a transferor industrial and provident society as a party to a loan relationship where the transferor society has not used fair value accounting in respect of the loan relationship and specifies what debits and credits in respect of the loan relationship are to be brought into account.

Regulation 20 explains when a transferee replaces a transferor society as party to a loan relationship for the purposes of regulation 19.

Regulation 21 deals with a regulation 19 case but where the transferor society has used fair value accounting.

Regulation 22 deals with the case where a transferee has replaced a transferor industrial and provident society as a party to a derivative contract where the transferor society has used fair value accounting in respect of the contract and specifies what debits and credits in respect of the contract are to be brought into account.

Regulation 23 explains when a transferee replaces a transferor as party to a derivative contract for the purposes of regulation 22.

Regulation 24 deals with a regulation 22 case but where the transferor society has used fair value accounting.

Regulation 25 deals with the case where a loan relationship or derivative contract had been transferred to a company before a relevant transfer and section 344 or section 630 of CTA (transferee leaving group after replacing transferor as party to loan relationship or derivative contract) applied to that earlier transfer. The relevant transfer will not cause section 345 or section 625 of CTA (transferee leaving a group otherwise than because of an exempt distribution) to apply. Regulation 25 also provides that section 345 or section 625 of CTA will apply if the company ceases to be a member of the same group as the transferee provided that the conditions in paragraph (4) are satisfied.

Regulation 26 is an anti-avoidance provision applying to transfers involving loan relationships and deals with the case where the transferor industrial and provident society is a party to arrangements and the purpose of the arrangements is to obtain a tax advantage for the transferor society or a person connected with the society.

Regulation 27 contains a similar rule to that in regulation 26 but in respect of transfers involving derivative contracts.

Regulation 28 provides that where the specified relevant transfer includes intangible fixed assets or goodwill, the transfer of those assets will be tax-neutral.

Regulation 29 deals with the treatment of intangible fixed assets or goodwill where the transferor industrial and provident society is a member of a group and, as a result of a relevant transfer, a company to which the intangible fixed assets or goodwill have been transferred leaves the group. Regulation 29 also deals with the case where a company was a member of the transferor's group, becomes a member of the transferee's group and subsequently ceases to be a member of that group.

Regulation 30 provides that where the transferor industrial and provident society is treated as disposing of any intangible fixed assets or goodwill such that no gain or loss arises on disposal then, in the hands of the transferee, Part 8 of CTA (intangible fixed assets) does not apply to the assets and goodwill.

Regulation 31 provides that specified relevant transfers by an industrial and provident society are exempt from the charge to stamp duty land tax.

Regulation 32 states that any instrument, document or agreement required to give effect to a relevant transfer by an industrial and provident society shall not be chargeable to stamp duty.

Part 4 of the Regulations contains regulations 33 to 35 which apply to all types of relevant transfers.

Regulation 33 deals with the case where a land transaction has occurred before a relevant transfer and is exempt from stamp duty land tax because the transaction was between a vendor and purchaser company in the same group. Where the purchaser ceases to be a member of the same group as the transferor mutual society as a result of the transfer the exemption from stamp duty land tax is preserved.

Regulation 34 makes transitional provision in relation to cases where a relevant transfer occurs on or after 22 April 2009 but before these Regulations come into force so that no party's liability to tax is increased as a result of the application of these Regulations to the transfer.

Regulation 35 provides that where a relevant transfer forms part of an unallowable arrangement any relief or advantage obtained as a result of the arrangement is to be reversed.

A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.