
STATUTORY INSTRUMENTS

2009 No. 2971

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

PART 3

INDUSTRIAL AND PROVIDENT SOCIETIES

Interpretation

15. In this Part—

“carrying value” has the meaning given by section 317 of CTA (carrying value)⁽¹⁾;

“discount” has the meaning given by section 480(5) of CTA (relevant non-lending relationships involving discounts);

“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,

⁽¹⁾ Section 317 has been amended by paragraph 2(7) of Schedule 30 to the [Finance Act 2009 \(c. 10\)](#).

section 179 of TCGA (company ceasing to be a member of group: post-appointed day cases)(2) 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.

(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.

(2) 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](#).

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)(3) 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).

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

(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)(4) 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)(**5**),
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)(**6**).

(5) 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](#).

(6) 2009 c. 4.

Status: This is the original version (as it was originally made).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

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(7).

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(8).

(7) 2003 c. 14.
(8) 1891 c. 39.