



Taxation of Chargeable Gains Act 1992

1992 CHAPTER 12

PART IV

SHARES, SECURITIES, OPTIONS ETC.

CHAPTER II

REORGANISATION OF SHARE CAPITAL, CONVERSION OF SECURITIES ETC.

[^{F1}Mergers within European Community

[^{F1}140F Merger: assets outside UK tax charge

- (1) This section applies on a merger which satisfies the conditions specified in subsection (2), where—
- (a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea),
 - (b) an SCE is formed by the merger of two or more cooperative societies, at least one of which is a [^{F2}registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014 or a society registered or treated as registered under the Industrial and Provident Societies Act (Northern Ireland) 1969], in accordance with Articles 2(1) and 19 of Council Regulation (EC) 1435/2003 on the Statute for a European Cooperative Society (SCE),
 - (c) the merger is effected by the transfer by one or more companies of all their assets and liabilities to a single existing company, or
 - (d) the merger is effected by the transfer by two or more companies of all their assets and liabilities to a single new company (other than an SE or an SCE) in exchange for the issue by the transferee, to each person holding shares in or debentures of a transferor, of shares or debentures.
- (2) The conditions mentioned in subsection (1) are that—

Changes to legislation: *Taxation of Chargeable Gains Act 1992, Section 140F is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (a) each merging company is resident in a [^{F3}relevant state],
 - (b) the merging companies are not all resident in the same [^{F4}relevant state],
 - (c) in the course of the merger a company resident in the United Kingdom (“company A”) transfers to a company resident in [^{F5}a] member State (“company B”) all assets and liabilities relating to a business which company A carried on in a member State ^{F6}... through a permanent establishment,
 - (d) the aggregate of the chargeable gains accruing to company A on the transfer exceeds the aggregate of any allowable losses so accruing, ^{F7}...
 - (e) in the case of a merger to which subsection (1)(a), (b) or (c) applies, either—
 - (i) the transfer of assets and liabilities is made in exchange for the issue by the transferee, to each person holding shares in or debentures of a transferor, of shares or debentures, or
 - (ii) sub-paragraph (i) is not satisfied by reason only, and to the extent only, that the transferee is prevented from complying with sub-paragraph (i) by section 658 of the Companies Act 2006 (rule against limited company acquiring own shares) or a corresponding provision of the law of [^{F8}a] member State preventing the issue of shares or debentures to itself [^{F9}and
 - (f) in the case of a merger to which subsection (1)(c) or (d) applies, in the course of the merger each transferor ceases to exist without being in liquidation (within the meaning given by section 247 of the Insolvency Act 1986 (c.55)).]
- (3) Where this section applies, for the purposes of this Act—
- (a) the allowable losses accruing to company A on the transfer shall be set off against the chargeable gains so accruing, and
 - (b) the transfer shall be treated as giving rise to a single chargeable gain equal to the aggregate of those gains after deducting the aggregate of those losses.
- (4) Where this section applies, [^{F10}section 122 of TIOPA 2010 (tax treated as chargeable in respect of gains on transfer of non-UK business)] shall also apply.
- (5) Subsections (8) and (9) of section 140E apply for the purposes of this section as they apply for the purposes of that section.]

Textual Amendments

- F1** Ss. 140E-140G and cross-heading substituted (with effect in accordance with reg. 3(2) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), **Sch. 2 para. 2**
- F2** Words in s. 140F(1)(b) substituted (1.8.2014) by [Co-operative and Community Benefit Societies Act 2014 \(c. 14\)](#), s. 154, **Sch. 4 para. 48** (with [Sch. 5](#)) (as amended (1.8.2014) by [Finance Act 2014 \(c. 26\)](#), **Sch. 39 paras. 4, 15**)
- F3** Words in s. 140F(2)(a) substituted (31.12.2020) by [The Taxes \(Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/689\)](#), regs. 1, **6(6)(a)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)
- F4** Words in s. 140F(2)(b) substituted (31.12.2020) by [The Taxes \(Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/689\)](#), regs. 1, **6(6)(b)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)
- F5** Word in s. 140F(2)(c) substituted (31.12.2020) by [The Taxes \(Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/689\)](#), regs. 1, **6(6)(c)(i)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)
- F6** Words in s. 140F(2)(c) omitted (31.12.2020) by virtue of [The Taxes \(Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/689\)](#), regs. 1, **6(6)(c)(ii)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

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- F7** Word in s. 140F(2)(d) omitted (with effect in accordance with reg. 3 of the amending S.I.) by virtue of [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2008 \(S.I. 2008/1579\)](#), reg. 1(2), **Sch. 1 para. 3(a)**
- F8** Word in s. 140F(2)(e)(ii) substituted (31.12.2020) by [The Taxes \(Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/689\)](#), regs. 1, **6(6)(d)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)
- F9** S. 140F(2)(f) and preceding word inserted (with effect in accordance with reg. 3 of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2008 \(S.I. 2008/1579\)](#), reg. 1(2), **Sch. 1 para. 3(b)**
- F10** Words in s. 140F(4) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Tax Law Rewrite Acts \(Amendment\) Order 2013 \(S.I. 2013/463\)](#), arts. 1(2), **6**

Modifications etc. (not altering text)

- C1** S. 140F(2)(e) modified (temp.) (8.7.2008) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2008 \(S.I. 2008/1579\)](#), regs. 1(2), 6(1), **Sch. 4 para. 2(d)** (with reg. 6(2))

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act applied by [1997 c. 16 Sch. 12 para. 12\(7\)](#)[1314](#)
- Act applied by [2002 c. 23 Sch. 16 para. 48\(1\)\(2\)](#)
- Act construed as one with reg. 37 by [S.I. 2006/575 reg. 37\(2\)](#)
- Act construed as one with reg. 38 by [S.I. 2006/575 reg. 38\(3\)](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 4(10)(11) inserted by [2016 c. 11 s. 15\(4\)](#)
- s. 4(10) words inserted by [2016 c. 24 s. 83\(11\)](#)
- s. 35(3)(d)(xviii) added by [2008 c. 17 Sch. 7 para. 9](#)
- s. 35(3)(d)(xviii) inserted by [2008 c. 18 Sch. 13 para. 46](#)
- s. 35(3)(d)(xviii) repealed by [S.I. 2008/3002 Sch. 1 para. 42](#)[Sch. 3](#) (This amendment comes into force on the day 2008 c. 4, s. 5 comes into force, see art. 1(2). That provision was brought into force on 1.12.2008 by [S.I. 2008/3068](#), art. 2(1)(b))
- s. 104(4)(b)(i) words substituted by [S.I. 1989/469](#), reg. 27(2) (as amended) by [S.I. 1997/1716 reg. 13\(1\)\(b\)](#)
- s. 107(11) words substituted by [S.I. 1989/469](#), reg. 27(2A) (as amended) by [S.I. 1997/1716 reg. 13\(2\)\(b\)](#)
- s. 169S(4A) inserted by [2015 c. 11 s. 43\(2\)](#)
- s. 587B inserted by [2000 c. 17 s. 43\(1\)](#)
- Sch. 5C para. 3(1) modified by [S.I. 2004/2199 reg. 7\(1\)](#)
- Sch. 5C para. 3(6) modified by [S.I. 2004/2199 reg. 7\(2\)](#)
- Sch. 5C para. 5(1) modified by [S.I. 2004/2199 reg. 7\(3\)](#)
- Sch. 5C para. 3 words inserted by [S.I. 2005/3229 reg. 128](#)
- Sch. 5C para. 5 words inserted by [S.I. 2005/3229 reg. 128](#)
- Sch. 5C para. 6 words inserted by [S.I. 2005/3229 reg. 128](#)
- Sch. 5C para. 3(1)(f) words substituted by [2007 c. 3 Sch. 1 para. 347](#)