

Status: Point in time view as at 01/04/2001.

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SCHEDULES

SCHEDULE 26

TRANSFERS: TAX

PART II

TRANSFERS TO SRA FROM FRANCHISING DIRECTOR, SECRETARY OF STATE AND REGULATOR

Interpretation

- 2 In this Part of this Schedule—
- “relevant transfer” means a transfer of property, rights or liabilities by virtue of—
- (a) section 215,
 - (b) a scheme under paragraph 1 of Schedule 15, or
 - (c) a scheme under paragraph 31 of Schedule 17,
- “transferee”, in relation to a relevant transfer, means the Authority, and
- “transferor”, in relation to a relevant transfer, means the person from whom the property, rights or liabilities are transferred.

Chargeable gains: no gain no loss

- 3 For the purposes of the 1992 Act a disposal by virtue of provision made under paragraph 34(a) of Schedule 17 is to be taken to be for a consideration such that no gain or loss accrues to the person making the disposal.

Chargeable gains: disposal of debts

- 4 (1) Sub-paragraph (2) applies if in the case of a relevant transfer—
- (a) a debt owed to the transferor is transferred to the transferee, and
 - (b) the transferor would, apart from this paragraph, be the original creditor in relation to that debt for the purposes of section 251 of the 1992 Act (disposal of debts).
- (2) The 1992 Act is to have effect as if the transferee (and not the transferor) were the original creditor for those purposes.

Capital allowances for plant and machinery

- 5 (1) This paragraph applies in relation to property if—
- (a) the property is plant or machinery to which a relevant transfer relates,
 - (b) the property would have been treated for the purposes of [F1the Capital Allowances Act] (had the transferor incurred expenditure qualifying for

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- allowances under [^{F1}Part 2 of that Act]on the provision of the property) as disposed of by the transferor to the transferee on the transfer taking effect, and
- (c) the relevant order or scheme contains provision for the transferee to be taken for the purposes of [^{F2}that Act] to have incurred capital expenditure of an amount specified in or determined in accordance with the order or scheme on the provision of the property.
- (2) For the purposes of [^{F3}the Capital Allowances Act]—
- (a) the transferee is to be taken to have incurred capital expenditure of that amount on the provision of the property for the purposes for which it is used by the transferee on and after the taking effect of the transfer,
- (b) the property is to be taken as belonging to the transferee in consequence of the transferee having incurred that expenditure, and
- (c) in the case of a fixture, the expenditure which falls to be treated as incurred by the transferee is to be taken for the purposes of [^{F4}sections 181(1) and 182(1) of that Act] to be incurred by the giving of a consideration consisting in a capital sum of that amount.
- (3) In sub-paragraph (1)(c) “the relevant order or scheme” means—
- (a) in the case of a transfer by virtue of section 215, an order made by the Secretary of State by statutory instrument, or
- (b) in the case of a transfer by virtue of a scheme under paragraph 1 of Schedule 15 or paragraph 31 of Schedule 17, the scheme concerned.
- (4) A provision mentioned in sub-paragraph (1)(c) for the determination of an amount may include provision—
- (a) for a determination to be made by the Secretary of State in a manner described in the order or scheme,
- (b) for a determination to be made by reference to factors so described or to the opinion of a person so described, and
- (c) for a determination to be capable of being modified (on one or more occasions) in a manner and in circumstances so described.
- (5) The Treasury’s consent is required for the making or modification of a determination under a provision mentioned in sub-paragraph (1)(c).
- (6) The transferee’s consent is also required for such a modification after the relevant transfer takes effect.
- (7) If there is a determination or a modification of a determination under a provision mentioned in sub-paragraph (1)(c) all necessary adjustments—
- (a) must be made by making assessments or by repayment or discharge of tax, and
- (b) must be made despite any limitation on the time within which assessments may be made.

Textual Amendments

- F1** Words in Sch. 26 para. 5(1)(b) substituted (22.3.2001, with effect as mentioned in 2001 c. 2, s. 579(1)) by 2001 c. 2, s. 578, Sch. 2 para. 109(3)

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- F2** Words in Sch. 26 para. 5(1)(c) substituted (22.3.2001, with effect as mentioned in 2001 c. 2, s. 579(1)) by 2001 c. 2, s. 578, **Sch. 2 para. 109(4)**
- F3** Words in Sch. 26 para. 5(2) substituted (22.3.2001, with effect as mentioned in 2001 c. 2, s. 579(1)) by 2001 c. 2, s. 578, **Sch. 2 para. 109(5)(a)**
- F4** Words in Sch. 26 para. 5(2)(c) substituted (22.3.2001, with effect as mentioned in 2001 c. 2, s. 579(1)) by 2001 c. 2, s. 578, **Sch. 2 para. 109(5)(b)**

Capital allowances for plant and machinery: connected persons

- 6 For the purposes of [F5Part 2 of the Capital Allowances Act] references in that Part to a transaction (however described) between connected persons within the meaning of section 839 of the 1988 Act are not to include references to a relevant transfer.

Textual Amendments

- F5** Words in Sch. 26 para. 6 substituted (22.3.2001, with effect as mentioned in 2001 c. 2, s. 579(1)) by 2001 c. 2, s. 578, **Sch. 2 para. 109(6)**

Loan relationships

- 7 (1) Sub-paragraph (2) applies if as a result of a relevant transfer the transferee replaces, or (if the transferor had been a company) would have replaced, the transferor as a party to a loan relationship.
- (2) Chapter II of Part IV of the M1Finance Act 1996 is to have effect in relation to the time when the relevant transfer takes effect and any later time as if—
- (a) the transferee had been a party to the loan relationship at the time the transferor became, or (if the transferor had been a company) would have become, a party to the loan relationship and at all times since that time, and
- (b) the loan relationship to which the transferee is a party after the time the transfer takes effect is the same loan relationship as that to which, by virtue of paragraph (a), it is treated as having been a party before that time.
- (3) For the purposes of sub-paragraph (2) the transferor (and accordingly the transferee) is to be taken to have accounted for the loan relationship in accordance with an authorised accounting method corresponding to that in accordance with which the transferee accounts for the loan relationship in the accounting period in which the transfer takes effect.
- (4) Expressions used in this paragraph and in Chapter II of Part IV of the Finance Act 1996 have the same meanings in this paragraph as in that Chapter.

Marginal Citations

- M1** 1996 c. 8.

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