

SCHEDULE 2

EUROPEAN CROSS-BORDER MERGERS

PART 3

AMENDMENTS OF FA 2002

Intangible assets

11. For paragraph 85A of Schedule 29 (formation of SE by merger) ^{M1} substitute—

“European cross-border merger: transfer of UK business

85A.—(1) This paragraph applies on a merger which satisfies the conditions specified in sub-paragraph (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 society registered under the Industrial and Provident Societies Act 1965 ^{M2}, 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 sub-paragraph (1) are that—

- (a) each of the merging companies is resident in a member State,
- (b) the merging companies are not all resident in the same State,
- (c) paragraph 84 does not apply to any qualifying transferred assets,
- (d) in the case of a merger to which sub-paragraph (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 in relation to the transfer by reason only, and to the extent only, that the transferee is prevented from complying with that sub-paragraph by section 658 of the Companies Act 2006 (rule against limited company acquiring own shares) or a corresponding provision of the law of another member State preventing the issue of shares or debentures to itself, and
- (e) in the case of a merger to which sub-paragraph (1)(c) or (d) applies, in the course of the merger each of the companies transferring assets and liabilities ceases to exist without being in liquidation (within the meaning given by section 247 of the Insolvency Act 1986 ^{M3}).

Changes to legislation: There are currently no known outstanding effects for the The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007, Paragraph 11. (See end of Document for details)

- (3) Where this paragraph applies, a transfer of qualifying transferred assets is treated for the purposes of this Schedule as tax-neutral (see paragraph 140).
- (4) For the purposes of sub-paragraphs (2) and (3) an asset is a qualifying transferred asset if—
- (a) it is transferred as part of the process of the merger,
 - (b) it is a chargeable intangible asset in relation to the transferor immediately before the transfer, and
 - (c) it is a chargeable intangible asset in relation to the transferee immediately after the transfer.
- (5) For the purposes of this paragraph—
- (a) “cooperative society” means a society registered under the Industrial and Provident Societies Act 1965 or a similar society governed by the law of a member State other than the United Kingdom,
 - (b) “transferor” means—
 - (i) in relation to a merger to which sub-paragraph (1)(a) applies, each company merging to form the SE,
 - (ii) in relation to a merger to which sub-paragraph (1)(b) applies, each cooperative society merging to form the SCE, and
 - (iii) in relation to a merger to which sub-paragraph (1)(c) or (d) applies, each company transferring all of its assets and liabilities,
 - (c) “transferee” means—
 - (i) in relation to a merger to which sub-paragraph (1)(a) applies, the SE,
 - (ii) in relation to a merger to which sub-paragraph (1)(b) applies, the SCE, and
 - (iii) in relation to a merger to which sub-paragraph (1)(c) or (d) applies, the company to which assets and liabilities are transferred,
 - (d) references, other than references in sub-paragraph (1)(a), (b) or (d), to a company include references to a cooperative society, and
 - (e) a company is resident in a member State if—
 - (i) it is within a charge to tax under the law of the State as being resident for that purpose, and
 - (ii) it is not regarded, for the purposes of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.
- (6) If sub-paragraph (2)(d)(ii) applies in relation to a transfer of assets and liabilities on a merger (in whole or in part), sections 24 and 122 of the Taxation of Chargeable Gains Act 1992 do not apply.
- (7) This paragraph applies only if the merger—
- (a) is effected for bona fide commercial reasons, and
 - (b) does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.
- (8) The requirements of sub-paragraph (7) are treated as met where, before the transfer, the Commissioners for Her Majesty's Revenue and Customs have, on the application of the transferor, notified the transferor that they are satisfied that the merger will be effected for bona fide commercial reasons and will not form part of any such scheme or arrangements as are mentioned in sub-paragraph (7)(b).
- (9) An application under sub-paragraph (8) must be made in accordance with paragraph 88.”.

Changes to legislation: There are currently no known outstanding effects for the The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007, Paragraph 11. (See end of Document for details)

Marginal Citations

M1 Paragraph 85A was inserted by section 52 of the Finance (No. 2) Act 2005.

M2 1986 c.46.

M3 1986 c. 46.

Changes to legislation:

There are currently no known outstanding effects for the The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007, Paragraph 11.