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STATUTORY INSTRUMENTS

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**2009 No. 2971**

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

**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<sup>(1)</sup> 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
  - (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)<sup>(2)</sup>, 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)<sup>(3)</sup>.

(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)—

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(1) 2001 c. 2.

(2) 1988 c 1. Section 393(1) has been amended by paragraph 4 of Schedule 35 to the [Finance Act 2008](#) (c. 9).

(3) 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).

- (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”.

(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.