

SCHEDULE 3

Regulation 3

AMENDMENTS TO FA 2002

PART 1

AMENDMENTS TO SCHEDULE 26 TO FA 2002

1. Schedule 26 to FA 2002 (derivative contracts) is amended as follows.
2. In paragraph 30A(5A)(1) (transferee leaving group after replacing transferor as party to derivative contract) before “transfer”, in each place, insert “merger or”.
- 3.—(1) Paragraph 30B(2) (European cross-border merger) is amended as follows.
 - (2) In sub-paragraph (2)—
 - (a) omit “and” at the end of paragraph (c), and
 - (b) after paragraph (d) insert—

“and
 - (e) in the case of a merger to which sub-paragraph (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) In sub-paragraph (3)—
 - (a) after “determining” insert “the”, and
 - (b) for “Chapter” substitute “Schedule”.
 - (4) Omit sub-paragraph (5).
 - (5) In sub-paragraph (8) for “(6)” substitute “(7)”.
 - (6) In sub-paragraph (9) omit paragraph (d).
4. In paragraph 30C(2)(3) (double taxation relief on European cross-border merger)—
 - (a) omit “and” at the end of paragraph (d), and
 - (b) after paragraph (e) insert—

“and
 - (f) in the case of a merger to which sub-paragraph (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)).”.
- 5.—(1) Paragraph 30D(4) (cross-border transfer of business within European Community) is amended as follows.
 - (2) In sub-paragraph (1) for paragraph (d) substitute—

“(d) the transferee—

 - (i) is resident in the United Kingdom immediately after the transfer, or

(1) Paragraph 30A was inserted by section 39 of, and paragraph 24(1) of Schedule 7 to, the Finance (No. 2) Act 2005 and sub-paragraph (5A) by paragraph 20 of Schedule 1 to [S.I. 2007/3186](#).

(2) Paragraph 30B was inserted by section 55 of the Finance (No. 2) Act 2005 and was substituted by paragraph 10 of Schedule 2 to [S.I. 2007/3186](#).

(3) Paragraph 30C was inserted by paragraph 10 of Schedule 2 to [S.I. 2007/3186](#).

(4) Paragraph 30D to 30F were inserted by paragraph 19 of Schedule 1 to [S.I. 2007/3186](#).

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(ii) is within the charge to corporation tax immediately after the transfer in accordance with section 11 of the Taxes Act 1988.”.

(3) Omit sub-paragraph (5).

(4) In sub-paragraph (6)—

- (a) after “determining” insert “the”, and
- (b) for “Chapter” substitute “Schedule”.

6.—(1) Paragraph 30G(5) (transparent entities) is amended as follows.

(2) In sub-paragraph (1)(a)—

- (a) for “to which paragraph 30D(1) or (2) applies (or to which either of those provisions would apply” substitute “mentioned in paragraph 30D(1) or (2) (or which would be of such a kind”, and
- (b) for “one of the conditions” substitute “the condition”.

(3) In sub-paragraph (2) for “30D(3)” substitute “30D”.

(4) In sub-paragraph (4) for “assets” substitute “rights and liabilities under the derivative contract”.

(5) In sub-paragraph (5)(a) after “transfer”, in each place, insert “of those rights and liabilities”.

7.—(1) Paragraph 30H (double taxation relief on European cross-border merger) is amended as follows.

(2) In sub-paragraph (1)(a) for “to which paragraph 30B(1) applies” substitute “mentioned in paragraph 30B(1)”.

(3) In sub-paragraph (2) for “30B(3) shall not apply” substitute “30B shall not apply in relation to the transfer”.

(4) In sub-paragraph (4) for “assets” substitute “rights and liabilities under the derivative contract”.

(5) In sub-paragraph (5)(a) after “transfer”, in each place, insert “of those rights and liabilities”.

8.—(1) Paragraph 30I (interpretation) is amended as follows.

(2) In sub-paragraph (1)—

- (a) for “30A” substitute “30B”,
- (b) after “30H” insert “and this paragraph”, and
- (c) in paragraph (1)(b) omit “(except in paragraph 30B)”.

(3) In sub-paragraph (2) omit “and sub-paragraph (1) above”.

9. In paragraph 50A(3B)(6) (adjustment on change of accounting policy) for paragraph (b) substitute—

“(b) paragraphs 28, 30B and 30D”.

(5) Paragraphs 30G to 30I were inserted by paragraph 4 of Schedule 3 to [S.I. 2007/3186](#).

(6) Paragraph 50A was inserted by section 52 of, and paragraph 67 of Schedule 10 to, the Finance Act 2004. Sub-paragraphs (3A) to (3D) were inserted by Schedule 26 to the Finance Act 2002 and articles 5 and 12 of [S.I. 2004/3270](#). Sub-paragraph (3B) (b) was substituted by Schedule 26 to the Finance Act 2002 (c. 23) and articles 2 and 28 of [S.I. 2006/3269](#).

PART 2

AMENDMENTS TO SCHEDULE 29 TO FA 2002

10. Schedule 29 to FA 2002 (gains and losses of a company from intangible fixed assets) is amended as follows.

11. In paragraph 85 (transfer of UK business between companies resident in different EU member States) omit sub-paragraph (1D)(7).

12.—(1) Paragraph 85A(8) (European cross-border merger: transfer of UK business) is amended as follows.

- (2) In sub-paragraph (5) omit paragraph (d) (but not the “and” following it).
- (3) Omit sub-paragraph (6).
- (4) In sub-paragraph (8) for “the transfer” substitute “the merger”.

13.—(1) Paragraph 85B(9) (transparent entities) is amended as follows.

(2) In sub-paragraph (1)(a) for “to which paragraph 85(1) or (1A) applies (or to which either of those provisions would apply)” substitute “mentioned in paragraph 85(1) or (1A) (or which would be of such a kind”.

- (3) In sub-paragraph (2) for “85(2)” substitute “85”.
- (4) In sub-paragraph (4) for “assets” substitute “intangible fixed assets”.
- (5) In sub-paragraph (5)(a) after “transfer”, in each place, insert “of those intangible fixed assets”.

14.—(1) Paragraph 85C (double taxation relief on European cross-border merger) is amended as follows.

(2) In sub-paragraph (1)(a) for “to which paragraph 85A(1) applies” substitute “mentioned in paragraph 85A(1)”.

(3) In sub-paragraph (2) for “85A(3) shall not apply” substitute “85A shall not apply in relation to the transfer”.

- (4) In sub-paragraph (4) for “assets” substitute “intangible fixed assets”.
- (5) In sub-paragraph (5)(a) after “transfer”, in each place, insert “of those intangible fixed assets”.

15.—(1) Paragraph 85D (interpretation of paragraphs 85B and 85C) is amended as follows.

(2) In sub-paragraph (1) for “85B and 85C” substitute “85, 85A, 85B, 85C, 87 and 87A and this paragraph”.

(3) In sub-paragraph (2) for “those paragraphs” substitute “paragraphs 85B and 85C”.

16.—(1) Paragraph 87 (transfer of non-UK business) is amended as follows.

(2) In sub-paragraph (2) for “those assets”, in the first place, substitute “the intangible fixed assets”.

(3) In sub-paragraph (3)(a) after “transfer” insert “of those intangible fixed assets”.

(7) Sub-paragraphs (1) to (1D) were substituted for sub-paragraph (1) by paragraph 21 of Schedule 1 to [S.I. 2007/3186](#).

(8) Paragraph 85A was inserted by section 52 of the Finance Act (No.2) Act 2005 and was substituted by paragraph 11 of Schedule 2 to [S.I. 2007/3186](#).

(9) Paragraphs 85B to 85D were inserted by paragraph 5 of Schedule 3 to [S.I. 2007/3186](#).

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17.—(1) Paragraph 87A(**10**) (European cross-border merger: transfer of non-UK business) is amended as follows.

(2) In sub-paragraph (2) —

(a) omit “and” at the end of paragraph (f), and

(b) after paragraph (g) insert—

“and

(h) in the case of a merger to which sub-paragraph (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) In sub-paragraph (5) omit paragraph (d) (but not the “and” following it).

18. In paragraph 88(1)(**11**) (procedure on application for clearance) for “85A(7)” substitute “85A(8)”.

(10) Paragraph 87A was inserted by section 53 of the Finance (No 2) Act 2005 and was substituted by paragraph 12 of Schedule 2 to S.I. 2007/3186.

(11) Paragraph 88(1) was amended by section 59(5) of the Finance (No. 2) Act 2005.