



Finance (No. 2) Act 1992

1992 CHAPTER 48

PART II

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER I

GENERAL

Transfers of trade

44 Transfer of a UK trade: amendment of 1992 Act

The Taxation of Chargeable Gains Act 1992 shall have effect, and be deemed always to have had effect, with the insertion of the following after section 140—

“Transfers concerning companies of different member States

140A Transfer of a UK trade

(1) This section applies where—

- (a) a qualifying company resident in one member State (company A) transfers the whole or part of a trade carried on by it in the United Kingdom to a qualifying company resident in another member State (company B),
- (b) the transfer is wholly in exchange for securities issued by company B to company A,
- (c) a claim is made under this section by company A and company B,
- (d) section 140B does not prevent this section applying, and

Status: This is the original version (as it was originally enacted).

- (e) the appropriate condition is met in relation to company B immediately after the time of the transfer.
- (2) Where immediately after the time of the transfer company B is not resident in the United Kingdom, the appropriate condition is that were it to dispose of the assets included in the transfer any chargeable gains accruing to it on the disposal would form part of its chargeable profits for corporation tax purposes by virtue of section 10(3).
- (3) Where immediately after the time of the transfer company B is resident in the United Kingdom, the appropriate condition is that none of the assets included in the transfer is one in respect of which, by virtue of the asset being of a description specified in double taxation relief arrangements, the company falls to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to it on a disposal.
- (4) Where this section applies—
 - (a) the two companies shall be treated, so far as relates to corporation tax on chargeable gains, as if any assets included in the transfer were acquired by company B from company A for a consideration of such amount as would secure that on the disposal by way of transfer neither a gain nor a loss would accrue to company A;
 - (b) section 25(3) shall not apply to any such assets by reason of the transfer (if it would apply apart from this paragraph).
- (5) For the purposes of subsection (1)(a) above, a company shall be regarded as resident in a member State if it is within a charge to tax under the law of the State because it is regarded as resident for the purposes of the charge.
- (6) For the purposes of subsection (5) above, a company shall be treated as not within a charge to tax under the law of a member State if it falls to be regarded for the purposes of any double taxation relief arrangements to which the State is a party as resident in a territory which is not within any of the member States.
- (7) In this section—
 - “qualifying company” means a body incorporated under the law of a member State;
 - “securities” includes shares.

140B Section 140A: anti-avoidance

- (1) Section 140A shall not apply unless the transfer of the trade or part is effected for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to income tax, corporation tax or capital gains tax.
- (2) Subsection (1) above shall not apply where, before the transfer, the Board have on the application of company A and company B notified those companies that the Board are satisfied that the transfer will be effected for bona fide commercial reasons and will not form part of any such scheme or arrangements as are mentioned in that subsection.

Status: This is the original version (as it was originally enacted).

- (3) Subsections (2) to (5) of section 138 shall have effect in relation to subsection (2) above as they have effect in relation to subsection (1) of that section.”