

SCHEDULES

SCHEDULE 26

TRANSFERS: TAX

PART III

TRANSFERS FROM BR TO SRA

Interpretation

- 8 In this Part of this Schedule—
- “relevant transfer” means a transfer of property, rights or liabilities by virtue of—
- (a) paragraph 11 of Schedule 18, or
 - (b) a scheme under paragraph 1 of Schedule 19,
- “transferee”, in relation to a relevant transfer, means the Authority, and
- “transferor”, in relation to a relevant transfer, means the Board.

Chargeable gains: general

- 9 For the purposes of the 1992 Act a disposal—
- (a) constituted by a relevant transfer, or
 - (b) by virtue of provision made under paragraph 4 of Schedule 19,
- is to be taken (in relation to the person to whom the disposal is made as well as the person making the disposal) to be for a consideration such that no gain or loss accrues to the person making the disposal.

Chargeable gains: restriction of losses

- 10 (1) If there has been a disposal of an asset—
- (a) constituted by a relevant transfer, or
 - (b) by virtue of provision made under paragraph 4 of Schedule 19,
- subsection (8) of section 41 of the 1992 Act (which applies that section to cases where assets have been acquired without gain or loss) is to have effect as if the asset had been disposed of and acquired in circumstances mentioned in that subsection.
- (2) This paragraph is not to prejudice paragraph 9.

Chargeable gains: groups

- 11 (1) Sub-paragraph (2) applies if a company (“the degrouped company”)—
- (a) acquired an asset from another company at any time when both were members of the same group of companies (“the old group”), and

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- (b) ceases by virtue of a relevant transfer to be a member of the old group.
- (2) Section 179 of the 1992 Act (company ceasing to be member of group) is not to treat the degrouped company as having by virtue of the transfer sold and immediately reacquired the asset.
- (3) If sub-paragraph (2) applies to an asset, that section is to have effect on and after the first subsequent occasion on which the degrouped company ceases to be a member of a group of companies (“the new group”), otherwise than by virtue of a qualifying transfer, as if the degrouped company and the company from which it acquired the asset had been members of the new group at the time of acquisition.
- (4) If, disregarding any preparatory transactions, a company would be regarded for the purposes of section 179 of the 1992 Act (and, accordingly, of this paragraph) as ceasing to be a member of a group of companies by virtue of a qualifying transfer, it is to be regarded for those purposes as so doing by virtue of the qualifying transfer and not by virtue of any preparatory transactions.
- (5) In this paragraph “preparatory transaction” means anything done under or by virtue of this Part of this Act for the purpose of initiating, advancing or facilitating the qualifying transfer in question.
- (6) Expressions used in this paragraph and in section 179 of the 1992 Act have the same meanings in this paragraph as in that section.

Chargeable gains: disposal of debts

- 12 (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.

Continuity in relation to capital allowances etc. where trade transferred

- 13 (1) If, apart from this paragraph—
 - (a) the transferor would be treated for the purposes of the Corporation Tax Acts as having ceased, by virtue of a relevant transfer taking effect, to carry on any trade, and
 - (b) the transferee would be treated as having begun, on that transfer taking effect, to carry it on,

the trade is not to be treated as permanently discontinued, nor a new trade as set up, for the purposes of the allowances and charges provided for by the Capital Allowances Acts, but sub-paragraphs (2) to (4) are to apply.
- (2) Subject to sub-paragraphs (3) and (4), in a case falling within sub-paragraph (1)—
 - (a) there are to be made to or on the transferee in accordance with the Capital Allowances Acts 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 is to be computed as if—

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- (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 the relevant transfer itself, so far as it relates to any assets in use for the purpose of the trade, shall not be treated as giving rise to any such allowance or charge).
- (3) For the purposes of the Corporation Tax Acts, only such amounts (if any) as may be specified in or determined in accordance with an order made by the Secretary of State by statutory instrument are to be allocated to the transferee in respect of expenditure by reference to which capital allowances may be made by virtue of sub-paragraph (2) in relation to anything to which the transfer relates.
- (4) Sub-paragraph (2) is to affect the amounts falling to be taken into account in relation to the transferor as expenditure by reference to which capital allowances may be made only so far as necessary to give effect to a reduction of any such amount by a sum equal to so much of that amount as is allocated to the transferee as mentioned in sub-paragraph (3).
- (5) An order under sub-paragraph (3) may include provision—
 - (a) for a determination to be made by the Secretary of State in a manner described in the order,
 - (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.
- (6) The Treasury's consent is required for the making or modification of a determination of any such amount as is mentioned in sub-paragraph (3).
- (7) The transferee's consent is also required for such a modification after the relevant transfer takes effect.
- (8) In determining whether sub-paragraph (1) has effect in relation to a relevant transfer in a case where—
 - (a) the transferor continues to carry on any trade or part of a trade after the transfer takes effect, or
 - (b) the transferee was carrying on any trade before the transfer takes effect,the trade or part of a trade which is continued, or was being carried on, shall for the purposes of that sub-paragraph be treated in relation to any trade or part of a trade which is transferred by virtue of the transfer as a separate trade and shall accordingly be disregarded.
- (9) If there is a determination or a modification of a determination for any purposes of this paragraph, 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.

Capital allowances for plant and machinery

- 14 (1) This paragraph applies in relation to property if—

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- (a) the property is plant or machinery to which a relevant transfer relates,
 - (b) paragraph 13 does not apply in relation to the transfer of the property to the transferee,
 - (c) the property would be treated for the purposes of the Capital Allowances Acts as disposed of by the transferor to the transferee on the transfer taking effect, and
 - (d) the scheme concerned contains provision for the disposal value of the property to be taken for the purposes of those Acts to be of an amount specified in or determined in accordance with the scheme.
- (2) For the purposes of those Acts—
- (a) the provision mentioned in sub-paragraph (1)(d) is to have effect (instead of section 26(1) or 59 of the 1990 Act) for determining an amount as the disposal value of the property or the price at which a fixture is to be treated as sold,
 - (b) 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,
 - (c) the property is to be taken as belonging to the transferee in consequence of the transferee having incurred that expenditure, and
 - (d) 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 section 54 of the 1990 Act to be incurred by the giving of a consideration consisting in a capital sum of that amount.
- (3) A provision mentioned in sub-paragraph (1)(d) 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 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.
- (4) The Treasury's consent is required for the making or modification of a determination under a provision mentioned in sub-paragraph (1)(d).
- (5) The transferee's consent is also required for such a modification after the relevant transfer takes effect.
- (6) If there is a determination or a modification of a determination under a provision mentioned in sub-paragraph (1)(d) 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.

Capital allowances for plant and machinery: connected persons

- 15 For the purposes of Part II of the 1990 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.

Leased assets

- 16 (1) Sub-paragraphs (2) and (3) apply for the purposes of section 781 of the 1988 Act (assets leased to traders and others) if the interest of the lessor or the lessee under a lease, or any other interest in an asset, is transferred to a person under a relevant transfer.
- (2) The transfer is to be treated as made without any capital sum having been obtained in respect of the interest by the transferor; and this is so despite section 783(4) of that Act.
- (3) If the interest is an interest under a lease, payments made by the transferor under the lease before the transfer takes effect are to be treated as if they had been made under that lease by the transferee.
- (4) Sub-paragraph (5) applies for the purposes of section 781 of the 1988 Act if a lease, or any other interest in an asset, is granted by virtue of provision made under paragraph 4 of Schedule 19.
- (5) The grant is to be treated as made without any capital sum having been obtained in respect of the lease, or interest, by the grantor; and this is so despite section 783(4) of that Act.
- (6) No charge is to arise under section 781(1) of the 1988 Act by virtue of section 783(2) of that Act in a case where the capital sum mentioned in section 781(1)(b)(i) or (ii) of that Act is or forms part of the consideration obtained (or treated by section 783(4) of that Act as obtained) by the transferor on a disposal by virtue of a relevant transfer of securities of a subsidiary of the transferor.
- (7) Expressions used in this paragraph and in sections 781 to 785 of the 1988 Act have the same meanings in this paragraph as in those sections.

Loan relationships

- 17 (1) Sub-paragraph (2) applies if, as a result of a relevant transfer, the transferee replaces the transferor as a party to a loan relationship.
- (2) Chapter II of Part IV of the Finance 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 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) 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.

Charge to tax under Case I of Schedule D

- 18 (1) This paragraph applies for the purpose of computing the profits or losses of the transferor and the transferee under Case I of Schedule D in respect of any trade or part of a trade transferred by a relevant transfer in relation to the time when the transfer takes effect and any later time.

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- (2) The trade or part of a trade transferred is to be treated as having been, at the time of its commencement and at all times since that time, a separate trade carried on by the transferee.
- (3) The trade carried on by the transferee after the time the transfer takes effect is to be treated as the same trade as that which, by virtue of sub-paragraph (2), it is treated as having carried on before that time.
- (4) This paragraph is subject to paragraphs 13 and 17.