

SCHEDULES

SCHEDULE 13

Section 37

TRANSFER SCHEMES: TAX PROVISIONS

PART 1

INTRODUCTION

Meaning of “public body”

- 1 In this Schedule “public body” means a person which is a public body for the purposes of section 66 of FA 2003 (SDLT: transfers involving public bodies).

Meaning of “taxable public body” and “exempt public body”

- 2 (1) In this Schedule “taxable public body” means a public body which is within the charge to corporation tax.
- (2) In this Schedule “exempt public body” means a public body which is exempt from corporation tax.

Interpretation: supplementary

- 3 (1) In this Schedule—
- “CAA 2001” means the Capital Allowances Act 2001 (c. 2);
 - “FA”, followed by a year, means the Finance Act of that year;
 - “ICTA” means the Income and Corporation Taxes Act 1988 (c. 1);
 - “ITA 2007” means the Income Tax Act 2007 (c. 3);
 - “ITTOIA 2005” means the Income Tax (Trading and Other Income) Act 2005 (c. 5);
 - “TCGA 1992” means the Taxation of Chargeable Gains Act 1992 (c. 12);
 - “TMA 1970” means the Taxes Management Act 1970 (c. 9);
 - “transfer scheme” means a scheme made under Schedule 12 to this Act;
 - “transferee”, in relation to a transfer in accordance with a transfer scheme, means the person to whom the transfer is made;
 - “transferor”, in relation to a transfer in accordance with a transfer scheme, means the person from whom the transfer is made.
- (2) So far as it relates to income tax this Schedule is to be construed as one with the Income Tax Acts.
- (3) So far as it relates to capital gains tax this Schedule is to be construed as one with TCGA 1992.

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- (4) So far as it relates to corporation tax this Schedule is to be construed as one with the Corporation Tax Acts.
- (5) So far as it relates to capital allowances this Schedule is to be construed as one with CAA 2001.

PART 2

TRANSFERS ETC BETWEEN TAXABLE PUBLIC BODIES

Meaning of “relevant transfer” in Part 2 of Schedule

- 4 In this Part of this Schedule “relevant transfer” means a transfer, in accordance with a transfer scheme, from a taxable public body to another taxable public body.

Computation of profits and losses in respect of transfer of trade

- 5 (1) This paragraph applies where a taxable public body (“the predecessor”) is carrying on a trade or a part of a trade and, as a result of a transfer scheme—
 - (a) the predecessor ceases to carry on that trade or that part of that trade, and
 - (b) another taxable public body (“the successor”) begins to carry on that trade or that part of it.
- (2) For the purpose of computing, in relation to the time when the scheme comes into force and subsequent times, the relevant trading profits or losses of the predecessor and the successor—
 - (a) the trade or part is to be treated as having been a separate trade at the time of its commencement and as having been carried on by the successor at all times since its commencement as a separate trade, and
 - (b) the trade carried on by the successor after the time when the scheme comes into force is to be treated as the same trade as that which it is treated, by virtue of paragraph (a), as having carried on as a separate trade before that time.
- (3) Where a trade or a part of a trade falls to be treated under this paragraph as a separate trade, such apportionments of receipts, expenses, assets and liabilities shall be made for the purpose of computing relevant trading profits or losses as may be just and reasonable.
- (4) This paragraph is subject to the other provisions of this Part of this Schedule.
- (5) In this paragraph “relevant trading profits or losses” means profits or losses under Case I of Schedule D in respect of the trade or part of a trade in question.

Transfers of trading stock

- 6 (1) This paragraph applies if—
 - (a) under a relevant transfer trading stock of the transferor is transferred to the transferee, and
 - (b) paragraph 5 does not apply in relation to that transfer.

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- (2) Sub-paragraphs (3) and (4) have effect in computing for any corporation tax purpose both the profits of the trade in relation to which the stock is trading stock immediately before the transfer takes effect (“the transferor’s trade”) and—
- (a) if the stock falls immediately after the transfer takes effect to be treated as trading stock of the transferee, the profits of the trade in relation to which it falls to be treated as trading stock (“the transferee’s trade”);
 - (b) otherwise, the consideration given by the transferee, or the expenditure incurred by the transferee, for the acquisition of the stock.
- (3) The stock must be taken to have been—
- (a) disposed of by the transferor in the course of the transferor’s trade,
 - (b) if sub-paragraph (2)(a) applies, acquired by the transferee in the course of the transferee’s trade, and
 - (c) subject to that, disposed of and acquired when the transfer takes effect.
- (4) The stock must be valued as if the disposal and acquisition had been for a consideration which in relation to the transferor would have resulted in neither a profit nor a loss being brought into account in respect of the disposal in the accounting period of the transferor which ends with, or is current at, the time when the transfer takes effect.
- (5) In this paragraph “trading stock” has the same meaning as in section 100 of ICTA.

Capital allowances: transfer of whole trade

- 7 (1) This paragraph applies where a taxable public body (“the predecessor”) is carrying on a trade and, as a result of a transfer scheme—
- (a) the predecessor ceases to carry on that trade, and
 - (b) another taxable public body (“the successor”) begins to carry on that trade.
- (2) For the purposes of the allowances and charges provided for by CAA 2001, the trade is not to be treated as permanently discontinued, nor a new trade as set up; but sub-paragraphs (3) and (4) are to apply.
- (3) There are to be made to or on the successor, in accordance with CAA 2001, all such allowances and charges as would, if the predecessor had continued to carry on the trade, have fallen to be made to or on the predecessor.
- (4) The amounts of those allowances and charges are to be computed as if—
- (a) the successor had been carrying on the trade since the predecessor began to do so, and
 - (b) everything done to or by the predecessor had been done to or by the successor,
- but so that transfers in accordance with the scheme, so far as they relate to assets in use for the purposes of the trade, shall not be treated as giving rise to an allowance or charge.

Capital allowances: transfer of part of a trade

- 8 (1) Where a taxable public body (“the predecessor”) is carrying on a trade and, as a result of a transfer scheme—
- (a) the predecessor ceases to carry on a trade, and

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- (b) another taxable public body (“the successor”) begins to carry on activities of that trade as part of a trade carried on by the successor,
then that part of the trade carried on by the successor shall be treated for the purposes of paragraph 7 as a separate trade.
- (2) Where a taxable public body (“the predecessor”) is carrying on a trade and, as a result of a transfer scheme—
- (a) the predecessor ceases to carry on a part of a trade, and
 - (b) another taxable public body begins to carry on activities of that part of that trade,
- then the predecessor shall be treated for the purposes of paragraph 7 and sub-paragraph (1) as having carried on that part of its trade as a separate trade.
- (3) Where activities fall to be treated for the purposes of this paragraph as a separate trade, such apportionments of receipts, expenses, assets and liabilities shall be made for the purposes of CAA 2001 as may be just and reasonable.

Capital allowances: transfer of plant or machinery

- 9 (1) This paragraph applies where—
- (a) there is a relevant transfer of plant or machinery,
 - (b) paragraph 7 does not apply in relation to that transfer,
 - (c) the plant or machinery would be treated for the purposes of CAA 2001 as disposed of by the transferor to the transferee on the transfer taking effect, and
 - (d) the transfer scheme in accordance with which the transfer is made contains provision for the disposal value of the plant or machinery to be treated for the purposes of that Act as an amount specified in or determined in accordance with the scheme.
- (2) For the purposes of CAA 2001—
- (a) the provision mentioned in sub-paragraph (1)(d) is to have effect for determining an amount as the disposal value of the plant or machinery or the price at which a fixture is to be treated as sold,
 - (b) the transferee is to be treated as having incurred capital expenditure of that amount on the provision of the plant or machinery 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 treated as belonging to the transferee as a result 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 treated for the purposes of sections 181(1) and 182(1) of that Act as being incurred by the giving of a consideration consisting in a capital sum of that amount.
- (3) The provision mentioned in sub-paragraph (1)(d) for the determination of an amount may include provision for a determination—
- (a) to be made by the Secretary of State in a manner described in the scheme,
 - (b) to be made by reference to factors so described or to the opinion of a person so described, and
 - (c) to be capable of being modified (on one or more occasions) in a manner and in circumstances so described.

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- (4) The consent of the Treasury is required for the making or modification of a determination under the provision mentioned in sub-paragraph (1)(d).
- (5) The consent of the transferee is required for the modification of a determination under the provision mentioned in sub-paragraph (1)(d).
- (6) As to the making of a determination or a modification of a determination under the provision mentioned in sub-paragraph (1)(d), see further paragraph 43.
- (7) Expressions used in this paragraph and in Part 2 of CAA 2001 have the same meanings in this paragraph as in that Part.

Capital allowances: transfers not to be sales

- 10 (1) This paragraph applies for the purposes of Part 3 of CAA 2001, and the other provisions of that Act which are relevant to that Part, to a relevant transfer of the relevant interest in an industrial building or structure.
- (2) Neither section 559 nor section 573 of that Act is to have effect in relation to that transfer.

Chargeable gains: assets to be treated as disposed of without a gain or a loss

- 11 (1) For the purposes of TCGA 1992 a disposal—
 - (a) constituted by a relevant transfer, or
 - (b) to which sub-paragraph (2) applies,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.
- (2) This sub-paragraph applies to a disposal if—
 - (a) it is made in accordance with provision contained in a transfer scheme by virtue of paragraph 4, 6 or 12 of Schedule 12 to this Act,
 - (b) the person making the disposal and the person to whom the disposal is made are taxable public bodies, and
 - (c) each of those persons is either the transferor or a transferee under the scheme.
- (3) Sub-paragraph (1) is subject to paragraph 12.

Chargeable gains: roll-over relief

- 12 (1) This paragraph applies if—
 - (a) but for section 154 of TCGA 1992 (depreciating assets) a held-over gain would have been carried forward to a depreciating asset, and
 - (b) the asset is the subject of a relevant transfer.
- (2) Section 154 is to have effect as if the gain had accrued to, and the claim for it to be held over had been made by, the transferee and as if the transferor's acquisition of the depreciating asset had been the transferee's acquisition of it.
- (3) Expressions used in this paragraph and in section 154 have the same meanings in this paragraph as in that section.

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Continuity in relation to transfer of intangible assets

- 13 (1) For the purposes of Schedule 29 to FA 2002—
- (a) a relevant transfer of a chargeable intangible asset of the transferor is to be treated as a tax-neutral transfer, and
 - (b) an intangible fixed asset which is an existing asset of the transferor at the time of a relevant transfer is to be treated, on and after the transfer, as an existing asset in the hands of the transferee.
- (2) Expressions used in this paragraph and in that Schedule have the same meanings in this paragraph as in that Schedule.

Continuity in relation to loan relationships

- 14 (1) For the purposes of the application of Chapter 2 of Part 4 of FA 1996 (loan relationships) in relation to a relevant transfer, the transferee and the transferor are to be treated as if, at the time of the transfer, they were members of the same group.
- (2) In sub-paragraph (1) the reference to being members of the same group must be construed in accordance with paragraph 12(8) of Schedule 9 to that Act.

Continuity in relation to derivative contracts

- 15 (1) For the purposes of the application of Schedule 26 to FA 2002 (derivative contracts) in relation to a relevant transfer, the transferee and the transferor are to be treated as if, at the time of the transfer, they were members of the same group.
- (2) In sub-paragraph (1) the reference to being members of the same group must be construed in accordance with paragraph 28(6) of that Schedule.

Leased assets

- 16 (1) This paragraph applies for the purposes of section 781 of ICTA (assets leased to traders and others) where—
- (a) the interest of the lessor or the lessee under a lease, or any other interest in an asset, is transferred under a relevant transfer, or
 - (b) a lease, or any other interest in a lease, is granted by a taxable public body to another taxable public body in accordance with provision contained by virtue of paragraph 4, 6 or 12 of Schedule 12 to this Act in a transfer scheme.
- (2) Section 783(4) of ICTA is to be disregarded and the transfer or grant is to be treated as made without any capital sum having been obtained in respect of the interest or lease by the transferor or grantor.
- (3) In the case of the transfer of 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) Expressions used in this paragraph and in sections 781 to 785 of ICTA have the same meanings in this paragraph as in those sections.

PART 3

TRANSFERS ETC FROM TAXABLE PUBLIC BODIES TO EXEMPT PUBLIC BODIES

Meaning of “relevant transfer” in Part 3 of Schedule

- 17 In this Part of this Schedule “relevant transfer” means a transfer, in accordance with a transfer scheme, from a taxable public body to an exempt public body.

Transfers of trading stock

- 18 (1) This paragraph applies if under a relevant transfer trading stock of the transferor is transferred to the transferee.
- (2) Sub-paragraphs (3) and (4) have effect in computing for any corporation tax purpose the profits of the trade in relation to which the stock is trading stock immediately before the transfer takes effect (“the transferor’s trade”).
- (3) The stock must be taken to have been—
- (a) disposed of by the transferor in the course of the transferor’s trade, and
 - (b) subject to that, disposed of when the transfer takes effect.
- (4) The value of the stock is to be taken to be—
- (a) if consideration is given to the transferor in respect of the transfer, an amount equal to the value of the consideration, or
 - (b) if no such consideration is given, nil.
- (5) For the purposes of this paragraph consideration given to a person connected with the transferor is to be treated as given to the transferor.
- (6) In this paragraph “trading stock” has the same meaning as in section 100 of ICTA.
- (7) For the purposes of this paragraph whether a person is connected with another person is determined in accordance with section 839 of ICTA (connected persons).

Capital allowances: determination of disposal value of plant or machinery

- 19 (1) This paragraph applies to a relevant transfer of plant or machinery which is a disposal event for the purposes of Part 2 of CAA 2001 (capital allowances for plant and machinery).
- (2) For the purposes of the application of section 61 of that Act in relation to the transferor, the disposal value of the plant or machinery is to be treated—
- (a) if a capital sum is received by the transferor by way of consideration or compensation in respect of the transfer, as an amount equal to that sum, or
 - (b) if no such sum is received, as nil.
- (3) For the purposes of this paragraph a sum received by a person connected with the transferor is to be treated as received by the transferor.
- (4) Section 88 of CAA 2001 (sales at an undervalue) is to be disregarded.
- (5) This paragraph is subject to sections 63(5) and 68 of CAA 2001.

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Capital allowances: determination of disposal value of fixtures

- 20 (1) This paragraph applies to a relevant transfer if—
- (a) it is a disposal event for the purposes of Part 2 of CAA 2001, and
 - (b) by virtue of the transfer a person is treated by section 188 of that Act as ceasing to own a fixture.
- (2) For the purposes of the application of section 196 of that Act in relation to the transferor, the disposal value of the fixture is to be treated—
- (a) if a capital sum is received by the transferor by way of consideration or compensation in respect of the transfer, as an amount equal to that portion of that sum which, if the person to whom the disposal is made were entitled to an allowance, would fall to be treated for the purposes of Part 2 of that Act as expenditure incurred by that person on the provision of the fixture, or
 - (b) if no such sum is received, as nil.
- (3) For the purposes of this paragraph a sum received by a person connected with the transferor is to be treated as received by the transferor.
- (4) This paragraph is subject to section 63(5) of CAA 2001.

Capital allowances: determination of capital value of industrial buildings etc.

- 21 (1) This paragraph applies for the purposes of Part 3 of CAA 2001, and the other provisions of that Act which are relevant to that Part, in relation to a relevant transfer of the relevant interest in an industrial building or structure.
- (2) This paragraph is subject to section 36 of FA 2007 (which makes provision about balancing adjustments etc under Part 3 of CAA 2001).
- (3) The transfer is to be treated as a sale of that relevant interest.
- (4) The net proceeds of that sale are to be treated—
- (a) if a capital sum is received by the transferor by way of consideration or compensation in respect of the transfer, as an amount equal to that sum, or
 - (b) if no such sum is received, as nil.
- (5) For the purposes of this paragraph a sum received by a person connected with the transferor is to be treated as received by the transferor.
- (6) Sections 567 to 570 of CAA 2001 (sales treated as being for alternative amount) are not to have effect in relation to that sale.

Chargeable gains: assets to be treated as disposed of without a gain or a loss

- 22 (1) For the purposes of TCGA 1992 a disposal—
- (a) constituted by a relevant transfer, or
 - (b) to which sub-paragraph (2) applies,
- is to be taken to be for a consideration such that no gain or loss accrues to the person making the disposal.
- (2) This sub-paragraph applies to a disposal if—
- (a) it is made in accordance with provision contained in a transfer scheme by virtue of paragraph 4, 6 or 12 of Schedule 12 to this Act,

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- (b) the person making the disposal is a taxable public body,
- (c) the person to whom the disposal is made is an exempt public body, and
- (d) each of those persons is either the transferor or a transferee under the scheme.

Neutral effect of transfer of intangible assets

- 23 (1) For the purposes of Schedule 29 to FA 2002, a relevant transfer of a chargeable intangible asset of the transferor is to be treated as not involving any realisation of the asset by the transferor.
- (2) Expressions used in this paragraph and in that Schedule have the same meanings in this paragraph as in that Schedule.

Neutral effect of transfer for loan relationships and derivative contracts

- 24 No credit or debit shall be required or allowed, in respect of a relevant transfer, to be brought into account in the transferor's case—
- (a) for the purposes of Chapter 2 of Part 4 of FA 1996 (loan relationships), or
 - (b) for the purposes of Schedule 26 to FA 2002 (derivative contracts).

Leased assets

- 25 (1) This paragraph applies for the purposes of section 781 of ICTA (assets leased to traders and others) where—
- (a) the interest of the lessor or the lessee under a lease, or any other interest in an asset, is transferred under a relevant transfer, or
 - (b) a lease, or any other interest in a lease, is granted by a taxable public body to an exempt public body in accordance with provision contained by virtue of paragraph 4, 6 or 12 of Schedule 12 to this Act in a transfer scheme.
- (2) Section 783(4) of ICTA is to be disregarded and the transfer or grant is to be treated as made without any capital sum having been obtained in respect of the interest or lease by the transferor or grantor.
- (3) Expressions used in this paragraph and in sections 781 to 785 of ICTA have the same meanings in this paragraph as in those sections.

PART 4

TRANSFERS FROM EXEMPT PUBLIC BODIES TO TAXABLE PUBLIC BODIES

Meaning of “relevant transfer” in Part 4 of Schedule

- 26 In this Part of this Schedule “relevant transfer” means a transfer, in accordance with a transfer scheme, from an exempt public body to a taxable public body.

Capital allowances: transfer of plant or machinery

- 27 (1) This paragraph applies where—
- (a) there is a relevant transfer of plant or machinery,

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- (b) the plant or machinery would have been treated for the purposes of CAA 2001 (had the transferor incurred expenditure qualifying for allowances under Part 2 of that Act on the provision of the plant or machinery) as disposed of by the transferor to the transferee on the transfer taking effect, and
 - (c) the transfer scheme in accordance with which the transfer is made contains provision for the transferee to be treated for the purposes of that Act as having incurred capital expenditure of an amount specified in or determined in accordance with the scheme on the provision of the plant or machinery.
- (2) For the purposes of CAA 2001—
- (a) the transferee is to be treated as having incurred capital expenditure of that amount on the provision of the plant or machinery for the purposes for which it is used by the transferee on and after the taking effect of the transfer,
 - (b) the property is to be treated as belonging to the transferee as a result of the transferee having incurred that expenditure, and
 - (c) in the case of a fixture, the expenditure which falls to be treated as incurred by the transferee is to be treated for the purposes of sections 181(1) and 182(1) of that Act as being incurred by the giving of a consideration consisting in a capital sum of that amount.
- (3) The provision mentioned in sub-paragraph (1)(c) for the determination of an amount may include provision for a determination—
- (a) to be made by the Secretary of State in a manner described in the scheme,
 - (b) to be made by reference to factors so described or to the opinion of a person so described, and
 - (c) to be capable of being modified (on one or more occasions) in a manner and in circumstances so described.
- (4) The consent of the Treasury is required for the making or modification of a determination under the provision mentioned in sub-paragraph (1)(c).
- (5) The consent of the transferee is required for the modification of a determination under the provision mentioned in sub-paragraph (1)(c).
- (6) As to the making of a determination or a modification of a determination under the provision mentioned in sub-paragraph (1)(c), see further paragraph 43.
- (7) Expressions used in this paragraph and in Part 2 of CAA 2001 have the same meanings in this paragraph as in that Part.

Capital allowances: determination of capital value of industrial buildings etc.

- 28 (1) This paragraph applies where there is a relevant transfer of the relevant interest in an industrial building or structure and the transfer scheme in accordance with which the transfer is made contains provision specifying for the purposes of section 311 of CAA 2001—
- (a) the amount to be taken as the amount of the residue of qualifying expenditure immediately after the event, and
 - (b) the period to be taken as the period from the date of the event to the end of the period of 25 years beginning with the day on which the building or structure was first used.

- (2) For the purposes of that section—
- (a) the transfer is to be treated as the occurrence of a relevant event,
 - (b) the residue of qualifying expenditure immediately after the event is to be taken to be the amount specified by virtue of sub-paragraph (1)(a), and
 - (c) the period from the date of the event to the end of the period of 25 years beginning with the day on which the building or structure was first used is to be taken to be the period specified by virtue of sub-paragraph (1)(b).
- (3) Expressions used in this paragraph and in Part 3 of CAA 2001 have the same meanings in this paragraph as in that Part.

PART 5

OTHER PROVISIONS CONCERNING TRANSFERS BETWEEN PUBLIC BODIES

Meaning of “relevant transfer” in Part 5 of Schedule

- 29 In this Part of this Schedule “relevant transfer” means a transfer, in accordance with a transfer scheme, from a public body to another public body.

Trading losses: change in ownership

- 30 (1) This paragraph applies to a relevant transfer of all the issued share capital of a company (the “transferred company”).
- (2) For the purposes of sections 768 to 768E of ICTA, the transfer is not to be taken to result in a change in the ownership of—
- (a) the transferred company, or
 - (b) a company which is a wholly-owned subsidiary of the transferred company when the transfer takes effect.

Chargeable gains: degrouping charges

- 31 (1) This paragraph applies if a company (“the degrouped company”)—
- (a) acquired an asset from another company at a time when both were members of the same group of companies (“the old group”),
 - (b) ceases by virtue of a relevant transfer to be a member of the old group, and
 - (c) becomes by virtue of the transfer a member of the same group of companies as the transferee (“the new group”).
- (2) Section 179 of TCGA 1992 (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) Where sub-paragraph (2) has applied to an asset, section 179 of TCGA 1992 is to have effect on and after the first subsequent occasion on which the degrouped company ceases to be a member of the new group otherwise than by virtue of a relevant transfer as if—
- (a) the degrouped company, and
 - (b) the company from which it acquired the asset,
- had been members of the new group at the time of acquisition.

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- (4) If, disregarding any preparatory transactions, a company would be regarded by virtue of a relevant transfer—
- (a) as ceasing to be a member of a group of companies for the purposes of section 179 of TCGA 1992 (and, accordingly, of this paragraph), or
 - (b) as becoming a member of a group of companies for the purposes of this paragraph,
- it is to be regarded for those purposes as so doing by virtue of the relevant transfer and not by virtue of any preparatory transactions.
- (5) In this paragraph “preparatory transactions” means anything done under or by virtue of this Act for the purpose of initiating, advancing or facilitating the relevant transfer in question.
- (6) Expressions used in this paragraph and in section 179 of TCGA 1992 have the same meanings in this paragraph as in that section.

Stamp duty

- 32 (1) Stamp duty is not to be chargeable—
- (a) on a transfer scheme in the case of which the transferor and each transferee is a public body, or
 - (b) on an instrument certified by the Secretary of State to the Commissioners for Her Majesty’s Revenue and Customs as made for the purposes of such a transfer scheme, or as made for purposes connected with such a transfer scheme.
- (2) But where, by virtue of sub-paragraph (1), stamp duty is not chargeable on a scheme or instrument, the scheme or instrument is to be treated as duly stamped only if—
- (a) in accordance with section 12 of the Stamp Act 1891 (c. 39) it has been stamped with a stamp denoting either that it is not chargeable to duty or that it has been duly stamped, or
 - (b) it is stamped with the duty to which it would be chargeable apart from sub-paragraph (1).
- (3) In this paragraph “instrument” has the same meaning as in the Stamp Act 1891.

PART 6

TRANSFERS ETC INVOLVING PRIVATE PERSONS

Meaning of “relevant transfer” in Part 6 of Schedule

- 33 In this Part of this Schedule “relevant transfer” means a transfer, in accordance with a transfer scheme, from or to a person other than a public body.

Transfers of trading stock

- 34 (1) This paragraph applies if under a relevant transfer trading stock of the transferor is transferred to the transferee.
- (2) Sub-paragraphs (3) and (4) have effect in computing for any corporation tax or income tax purpose both the profits of the trade in relation to which the stock is

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- trading stock immediately before the transfer takes effect (“the transferor’s trade”) and—
- (a) if the stock falls immediately after the transfer takes effect to be treated as trading stock of the transferee, the profits of the trade in relation to which it falls to be treated as trading stock (“the transferee’s trade”);
 - (b) otherwise, the consideration given by the transferee, or the expenditure incurred by the transferee, for the acquisition of the stock.
- (3) The stock must be taken to have been—
- (a) disposed of by the transferor in the course of the transferor’s trade,
 - (b) if sub-paragraph (2)(a) applies, acquired by the transferee in the course of the transferee’s trade, and
 - (c) subject to that, disposed of and acquired when the transfer takes effect.
- (4) The value of the stock is to be taken to be—
- (a) if consideration is given to the transferor in respect of the transfer, an amount equal to the value of the consideration, or
 - (b) if no such consideration is given, nil.
- (5) For the purposes of this paragraph consideration given to a person connected with the transferor is to be treated as given to the transferor.
- (6) In this paragraph “trading stock” has the same meaning as in section 100 of ICTA (as respects corporation tax) or section 174 of ITTOIA 2005 (as respects income tax).
- (7) For the purposes of this paragraph whether a person is connected with another person is determined in accordance with section 839 of ICTA (as respects corporation tax) or section 993 of ITA 2007 (as respects income tax).

Capital allowances: determination of disposal value of plant or machinery

- 35 (1) This paragraph applies to a relevant transfer of plant or machinery which is a disposal event for the purposes of Part 2 of CAA 2001 (capital allowances for plant and machinery).
- (2) For the purposes of the application of section 61 of that Act (disposal events and disposal value) in relation to the transferor, the disposal value of the plant or machinery is to be treated—
- (a) if a capital sum is received by the transferor by way of consideration or compensation in respect of the transfer, as an amount equal to that sum, or
 - (b) if no such sum is received, as nil.
- (3) For the purposes of this paragraph a sum received by a person connected with the transferor is to be treated as received by the transferor.
- (4) Section 88 of CAA 2001 (sales at an undervalue) is to be disregarded.
- (5) This paragraph is subject to sections 63(5) and 68 of CAA 2001.

Capital allowances: determination of disposal value of fixtures

- 36 (1) This paragraph applies to a relevant transfer if—
- (a) it is a disposal event for the purposes of Part 2 of CAA 2001, and

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- (b) by virtue of the transfer a person is treated by section 188 of that Act as ceasing to own a fixture.
- (2) For the purposes of the application of section 196 of that Act in relation to the transferor, the disposal value of the fixture is to be treated—
 - (a) if a capital sum is received by the transferor by way of consideration or compensation in respect of the transfer, as an amount equal to that portion of that sum which falls (or, if the person to whom the disposal is made were entitled to an allowance, would fall) to be treated for the purposes of Part 2 of that Act as expenditure incurred by that person on the provision of the fixture, or
 - (b) if no such sum is received, as nil.
- (3) For the purposes of this paragraph a sum received by a person connected with the transferor is to be treated as received by the transferor.
- (4) This paragraph is subject to section 63(5) of CAA 2001.

Capital allowances: section 265 of CAA 2001 not to apply in relation to transferee

- 37 (1) This paragraph applies in relation to a relevant transfer.
- (2) For the purposes of the application of Part 2 of CAA 2001 in relation to the transferee, section 265 of that Act (successions: general) is to be disregarded.

Capital allowances: determination of capital value of industrial buildings etc.

- 38 (1) This paragraph applies for the purposes of Part 3 of CAA 2001, and the other provisions of that Act which are relevant to that Part, in relation to a relevant transfer of the relevant interest in an industrial building or structure.
- (2) This paragraph is subject to section 36 of FA 2007 (which makes provision about balancing adjustments etc under Part 3 of CAA 2001).
- (3) The transfer is to be treated as a sale of that relevant interest.
- (4) The net proceeds of that sale are to be treated—
 - (a) if a capital sum is received by the transferor by way of consideration or compensation in respect of the transfer, as an amount equal to that sum, or
 - (b) if no such sum is received, as nil.
- (5) For the purposes of this paragraph a sum received by a person connected with the transferor is to be treated as received by the transferor.
- (6) Sections 567 to 570 of CAA 2001 (sales treated as being for alternative amount) are not to have effect in relation to that sale.

Chargeable gains: disposals not to be treated as made at market value

- 39 (1) Section 17 of TCGA 1992 (disposals and acquisitions treated as made at market value) is not to have effect in relation to—
 - (a) a disposal constituted by a relevant transfer,
 - (b) a disposal to which sub-paragraph (2) applies, or
 - (c) the acquisition made by the person to whom the disposal is made;

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but this sub-paragraph does not apply if the person making the disposal is connected with the person making the acquisition.

- (2) This sub-paragraph applies to a disposal if—
- (a) it is made in accordance with provision contained in a transfer scheme by virtue of paragraph 4, 6 or 12 of Schedule 12 to this Act,
 - (b) the person making the disposal or the person to whom the disposal is made is a person other than a public body, and
 - (c) each of those persons is either the transferor or a transferee under the scheme.
- (3) If sub-paragraph (1) applies to the disposal of an asset, the disposal is to be taken (in relation to the person making the acquisition as well as the person making the disposal) to be—
- (a) in a case where consideration in money or money's worth is given by the person making the acquisition or on his behalf in respect of the vesting of the asset in him, for a consideration equal to the amount or value of that consideration, or
 - (b) in a case where no such consideration is given, for a consideration of nil.

Loan relationships

- 40 (1) Paragraph 11 of Schedule 9 to FA 1996 (transactions not at arm's length) is not to have effect where, as a result of a relevant transfer, the transferee replaces the transferor as a party to a loan relationship.
- (2) Expressions used in this paragraph and in Chapter 2 of Part 4 of FA 1996 have the same meanings in this paragraph as in that Chapter.

PART 7

OTHER PROVISIONS CONCERNING TRANSFERS

Chargeable gains: value shifting

- 41 No transfer scheme is to be regarded as a scheme or arrangement for the purposes of section 30 of TCGA 1992.

Group relief

- 42 The power of the Secretary of State to make a transfer scheme is not to be regarded as constituting—
- (a) arrangements falling within section 410(1) or (2) of ICTA (arrangements for transfer of company to another group or consortium), or
 - (b) option arrangements for the purposes of paragraph 5B of Schedule 18 to ICTA.

Modification of transfer schemes and determinations under paragraph 9(1)(d) or 27(1)(c): companies

- 43 (1) This paragraph applies if—
- (a) a company delivers a company tax return,

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- (b) subsequently, an event mentioned in sub-paragraph (2) below occurs, and
 - (c) as a result of that event, the return is incorrect.
- (2) The events are—
- (a) the making of an agreement modifying a transfer scheme under paragraph 15 of Schedule 12 to this Act;
 - (b) a determination or modification of a determination under the provision mentioned in paragraph 9(1)(d) or 27(1)(c) above.
- (3) The return may be amended under paragraph 15 of Schedule 18 to FA 1998 so as to remedy the error, ignoring any time limit which would otherwise prevent that happening.
- (4) But an amendment may not be made in reliance on sub-paragraph (3) above more than 12 months after the end of the accounting period of the company during which (as the case may be)—
- (a) the agreement is made, or
 - (b) the determination or modification of a determination is made.
- (5) Sub-paragraphs (6) and (7) below apply if the company does not amend the return so as to remedy the error before the end of that 12 month period.
- (6) A discovery assessment or a discovery determination may be made in relation to the error, ignoring any time limit which would otherwise prevent that happening.
- (7) But such an assessment or determination may not be made in reliance on sub-paragraph (6) above more than 24 months after the end of the accounting period mentioned in sub-paragraph (4) above.
- (8) Expressions used in this paragraph and in Schedule 18 to FA 1998 have the same meaning in this paragraph as in that Schedule.

Modification of transfer schemes: other persons and partnerships

- 44 (1) This paragraph applies if—
- (a) a person delivers a return under section 8, 8A or 12AA of TMA 1970,
 - (b) subsequently, an agreement is made modifying a transfer scheme under paragraph 15 of Schedule 12 to this Act, and
 - (c) as a result of that, the return is incorrect.
- (2) The return may be amended under section 9ZA or 12ABA of TMA 1970 so as to remedy the error, ignoring any time limit which would otherwise prevent that happening.
- (3) But an amendment may not be made in reliance on sub-paragraph (2) above more than 12 months after the end of the year of assessment during which the agreement modifying the transfer scheme is made.
- (4) If the return is amended under section 12ABA in reliance on sub-paragraph (2) above, subsection (3) of that section applies, ignoring any time limit which would otherwise prevent the officer from proceeding under that subsection.
- (5) Sub-paragraphs (6) and (7) below apply if the return is not amended under section 9ZA or 12ABA so as to remedy the error before the end of the 12 month period mentioned in sub-paragraph (3) above.

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- (6) An officer of Revenue and Customs may proceed under section 29(1) or 30B(1) and (2) of TMA 1970 in relation to the error, ignoring any time limit which would otherwise prevent the officer from so proceeding.
- (7) But an assessment or an amendment may not be made in reliance on sub-paragraph (6) above more than 24 months after the end of the year of assessment mentioned in sub-paragraph (3) above.

Power to make further provision in relation to transfer schemes

- 45 (1) The Treasury may by regulations make provision for varying the way in which a relevant tax has effect from time to time (including by virtue of this Schedule) in relation to—
- (a) any property, rights or liabilities transferred in accordance with a transfer scheme, or
 - (b) anything done for the purposes of, or in relation to, or in consequence of, the transfer of any property, rights or liabilities in accordance with a transfer scheme.
- (2) The provision that may be made under sub-paragraph (1)(a) includes, in particular, provision for—
- (a) a tax provision not to apply, or to apply with modifications, in relation to any property, rights or liabilities transferred;
 - (b) any property, rights or liabilities transferred to be treated in a specified way for the purposes of a tax provision;
 - (c) the Secretary of State to be required or permitted, with the consent of the Treasury, to determine, or to specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to any property, rights or liabilities transferred.
- (3) The provision that may be made under sub-paragraph (1)(b) includes, in particular, provision for—
- (a) a tax provision not to apply, or to apply with modifications, in relation to anything done for the purposes of, or in relation to, or in consequence of, the transfer;
 - (b) anything done for the purposes of, or in relation to, or in consequence of, the transfer to have or not to have a specified consequence or to be treated in a specified way;
 - (c) the Secretary of State to be required or permitted, with the consent of the Treasury, to determine, or to specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to anything done for the purposes of, or in relation to, or in consequence of, the transfer.
- (4) Regulations under sub-paragraph (1) may amend this Schedule (apart from this paragraph).
- (5) Regulations under sub-paragraph (1) may—
- (a) make such supplementary, incidental or consequential provision as the Treasury think fit, and
 - (b) make different provision for different cases.

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- (6) The power to make regulations under sub-paragraph (1) shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.
- (7) In this paragraph references to any property, rights or liabilities transferred in accordance with a transfer scheme include references to any property, rights or liabilities transferred, or any interests, rights or liabilities created, by virtue of paragraph 4, 6 or 12 of Schedule 12 to this Act.
- (8) In this paragraph references to the transfer of any property, rights or liabilities in accordance with a transfer scheme include references to the transfer of any property, rights or liabilities, or the creation of any interests, rights or liabilities, by virtue of paragraph 4, 6 or 12 of Schedule 12 to this Act.
- (9) In this paragraph—
“relevant tax” means income tax, corporation tax, capital gains tax, stamp duty, stamp duty land tax or stamp duty reserve tax, and
“tax provision” means a provision of an enactment about a relevant tax.
- (10) In sub-paragraph (9) “enactment” includes an enactment contained in an instrument made under an Act.
- (11) Paragraph 20(3) of Schedule 12 to this Act applies for the purposes of this paragraph as it applies for the purposes of that Schedule.

Consequential amendment

- 46 In section 35(3)(d) of TCGA 1992 (no gain no loss disposals), after sub-paragraph (xvii) insert—
“(xviii) paragraph 11 or 22 of Schedule 13 to the Crossrail Act 2008.”