

SCHEDULES

SCHEDULE 13

TRANSFER SCHEMES: TAX PROVISIONS

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—

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- (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.
- (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
 - (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,

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- (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)(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.

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.