These notes refer to the Finance Act 2010 (c.13) which received Royal Assent on 8 April 2010

FINANCE ACT 2010

EXPLANATORY NOTES

INTRODUCTION

Section 37: Asset Transfer to Non-Resident Company: Recovery of Postponed Charge

Background Note

6. The amended and new provisions are intended to ensure that a postponed charge on gains arising where assets of an overseas branch are transferred to a non-resident company is brought back into charge at the appropriate time.

7. The existing section 140 of TCGA creates unintended outcomes in the treatment of postponed gains where, in exchange for a transfer of assets of an overseas branch, a UK company receives securities which are themselves exempt (such as QCB's which are exempted by section 115 of TCGA), and for which there was no other provision which brought the postponed gain back into charge to tax. The changes deem a separate chargeable gain equal to the postponed gain to accrue to the transferor at the time of disposal of the securities. This replaces the existing treatment of bringing a postponed gain back into charge by treating the postponed chargeable gain as additional consideration on a subsequent disposal of securities.

8. The changes were announced in a Written Ministerial Statement on 6 January 2010. An HM Revenue & Customs (HMRC) Technical Note and draft legislation were also published on that date on the HMRC website (http://www.hmrc.gov.uk/drafts/transfer-assets.htm).