

SCHEDULES

SCHEDULE 24

Section 233

TRANSFERS AND TRANSFER SCHEMES: TAX PROVISIONS

PART 1

TRANSFER UNDER PARAGRAPH 63 OF SCHEDULE 16

- 1 (1) For the purposes of any enactment about income tax or corporation tax, the Office and the HCA are to be treated as the same person.
- (2) In particular, the transfer effected by paragraph 63 of Schedule 16 is to be disregarded for those purposes.
- (3) Accordingly, that transfer is not to be regarded for the purposes of Part 8 of the Corporation Tax Act 2009 (gains and losses from intangible fixed assets) as involving any realisation of an asset by the Office or acquisition of an asset by the HCA.
- (4) In this paragraph—
“enactment” includes an enactment contained in an instrument made under an Act,
“the HCA” means the Homes and Communities Agency, and
“the Office” means the Office for Tenants and Social Landlords.

PART 2

CERTAIN TRANSFERS UNDER SCHEME UNDER SECTION 190 OR 191

Interpretation of Part 2 of Schedule

- 2 In this Part of this Schedule—
“CTA 2009” means the Corporation Tax Act 2009,
“public body” means—
(a) a person which is a public body for the purposes of section 66 of the Finance Act 2003 (stamp duty land tax: transfers involving public bodies), or
(b) a person prescribed for the purposes of this Part of this Schedule by order made by the Treasury,
“relevant transfer” means—
(a) a transfer, in accordance with a transfer scheme under section 190, to a taxable public body of property, rights or liabilities of the Homes and Communities Agency, or
(b) a transfer, in accordance with a transfer scheme under section 191, to a taxable public body,

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“taxable public body” means a public body which is within the charge to corporation tax,

“transferee”, in relation to a transfer in accordance with a transfer scheme under section 190 or 191, means the person to whom the transfer is made, and

“transferor”—

- (a) means the Homes and Communities Agency in relation to a transfer, in accordance with a transfer scheme under section 190, of property, rights or liabilities of that Agency, and
- (b) means the London Development Agency in relation to a transfer in accordance with a transfer scheme under section 191.

Computation of profits and losses in respect of transfer of a trade

- 3 (1) This paragraph applies where a taxable public body (“the predecessor”) is carrying on a trade or part of a trade and, as a result of a transfer scheme under section 190 or 191—
- (a) the predecessor ceases to carry on that trade or part of a trade, and
 - (b) another taxable public body (“the successor”) begins to carry on that trade or part.
- (2) For the purposes of calculating, 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 the successor is treated, by virtue of paragraph (a), as having carried on as a separate trade before that time.
- (3) If a trade or part of a trade is to be treated under this paragraph as a separate trade, such apportionments of receipts, expenses, assets and liabilities are to be made for the purposes 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 Part 3 of CTA 2009 in respect of the trade or part of a trade in question.

Transfers of trading stock

- 4 (1) This paragraph applies if—
- (a) under a relevant transfer, trading stock of the transferor is transferred to the transferee,
 - (b) immediately after the transfer takes effect, the stock is to be treated as trading stock of the transferee, and
 - (c) paragraph 3 does not apply in relation to the transfer.
- (2) Sub-paragraphs (3) and (4) have effect in calculating for any corporation tax purpose both—

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- (a) 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
 - (b) the profits of the trade in relation to which it is to be treated as trading stock (“the transferee’s trade”).
- (3) The stock is to be treated as having been—
- (a) disposed of by the transferor in the course of the transferor’s trade,
 - (b) 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 is to 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 meaning given by section 163 of CTA 2009.

Continuity in relation to loan relationships

- 5
- (1) For the purposes of the application of Part 5 of CTA 2009 (loan relationships) in relation to a relevant transfer of rights and liabilities under a loan relationship to which immediately before the transfer takes effect the transferor is a party for the purposes of a trade it carries on, 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) For the purposes of the application of Part 5 of CTA 2009 in relation to a transfer that—
- (a) is to a public body,
 - (b) is in accordance with a transfer scheme under section 190 or 191, and
 - (c) is of rights and liabilities under a loan relationship to which immediately before the transfer takes effect the HCA or LDA is a party otherwise than for the purposes of a trade it carries on,
- the HCA or LDA, and the person to whom the transfer is made, are to be treated as if at the time of the transfer they were members of the same group.
- (3) In this paragraph any reference to being members of the same group is to be read in accordance with section 170 of the Taxation of Chargeable Gains Act 1992.
- (4) In this paragraph—
- “the HCA” means the Homes and Communities Agency, and
 - “the LDA” means the London Development Agency.

Chargeable gains: disposal on transfer to be treated as no gain/no loss disposal

- 6
- (1) For the purposes of the Taxation of Chargeable Gains Act 1992, a disposal constituted by a transfer within sub-paragraph (2) is to be treated in relation to the transferor and transferee as made for a consideration such that no gain or loss accrues to the transferor.
- (2) A transfer is within this sub-paragraph if—

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- (a) it is a transfer in accordance with a transfer scheme under section 190 of property, rights or liabilities of the Homes and Communities Agency and the transferee is a public body, or
 - (b) it is in accordance with a transfer scheme under section 191 and the transferee is a public body.
- (3) In section 288(3A) of the Taxation of Chargeable Gains Act 1992 (meaning of the “no gain/no loss provisions”) at the end insert—
- “(m) paragraph 6(1) of Schedule 24 to the Localism Act 2011.”

Stamp duty

- 7 Stamp duty is not chargeable on a transfer scheme under section 191 if the transferee is a public body.

Modifications of transfer schemes

- 8 (1) This paragraph applies if—
- (a) a company delivers a company tax return,
 - (b) subsequently an agreement is made modifying a transfer scheme under section 190 or 191, and
 - (c) as a result of that, the return is incorrect.
- (2) The return may be amended under paragraph 15 of Schedule 18 to the Finance Act 1998 so as to remedy the error, ignoring any time limit which would otherwise prevent that happening.
- (3) An amendment may not be made in reliance on sub-paragraph (2) more than 12 months after the end of the accounting period of the company during which the agreement is made.
- (4) Sub-paragraphs (5) and (6) apply if the company does not amend the return so as to remedy the error before the end of that 12 month period.
- (5) 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.
- (6) Such an assessment or determination may not be made in reliance on sub-paragraph (5) more than 24 months after the end of the accounting period mentioned in sub-paragraph (3).
- (7) Expressions used in this paragraph and in Schedule 18 to the Finance Act 1998 have in this paragraph the meaning they have in that Schedule.

PART 3

TRANSFERS UNDER SCHEME UNDER SECTION 17, 200(1) OR (4) OR 216(1)

- 9 (1) In this paragraph “transfer scheme” means a transfer scheme under section 17, 200(1) or (4) or 216(1).
- (2) The Treasury may by regulations make provision for varying the way in which a relevant tax has effect from time to time in relation to—

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- (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.
- (3) The provision that may be made under sub-paragraph (2)(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) an appropriate authority to be required or permitted 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.
- (4) The provision that may be made under sub-paragraph (2)(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) an appropriate authority to be required or permitted 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, in relation to, or in consequence of, the transfer.
- (5) In this paragraph—
- “appropriate authority” means—
 - (a) the Treasury,
 - (b) any other Minister of the Crown with the consent of the Treasury, or
 - (c) the Mayor of London with the consent of the Treasury,
 - “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975,
 - “relevant tax” means corporation tax, income 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.
- (6) In sub-paragraph (5) “enactment” includes an enactment contained in an instrument made under an Act.