

**EXPLANATORY MEMORANDUM TO
THE CORPORATION TAX (IMPLEMENTATION OF EUROPEAN MERGERS
DIRECTIVE) REGULATIONS 2007**

2007 No. 3186

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

2. Description

The Regulations amend the Taxes Acts to make provision to ensure that the United Kingdom tax legislation is compliant with its obligations under the European Directive on the common system of taxation applicable to mergers, divisions, transfer of assets and exchanges of shares concerning companies of different Member States (90/434/EEC).

3. Matters of special interest to the Select Committee on Statutory Instruments
None

4. Legislative Background

The powers to make the Regulations were conferred by Section 110 Finance Act 2007.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Financial Secretary to the Treasury has stated that in her view, these Regulations are compatible with the Convention rights

7. Policy background

7.1. The European Mergers Tax Directive (EMTD) sets out a common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States (90/434/EEC) and provides for the deferral of a tax charge on income, profits and gains accruing to a company participating in mergers and a range of related transactions.

7.2. These Regulations are necessary as the UK's existing enactment of the European Mergers Directive required extension to cover a number of transactions and business entities introduced by the 2005 Directive for which the UK had no legislation in place.

7.3. The Regulations have been published for technical comment. They are broadly cost neutral and provide for the deferral of tax charged on income, profits and gains accruing

to a company and its shareholders participating in certain mergers and a range of transactions falling within the scope of the EMTD.

8. Impact

A partial Regulatory Impact Assessment was published with the Technical Note and can be found at

http://customs.hmrc.gov.uk/channelsPortalWebApp/downloadFile?contentID=HMCE_P ROD1_026318

9. Contact

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Implementation of the Council Directive 2005/19/EC of 17th February 2005 amending Directive 90/434/EEC 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different member states.

Table of transposition of the main elements of the Directive:

The Council Directive 2005/19/EC amended or replaced the provisions in Directive 90/434/90 as follows:	Summary of the amended/replaced provision	Implementation Introduction of /amendment to the following legislation.
Article 2 a	Defines 'Partial Division'	S140A 1A TCGA 1992
Article 4 1.	Tax deferral at asset level on transactions: 1. Merger 2. Transfer of assets 3. Partial Division	1. Merger <ul style="list-style-type: none"> • S140E TCGA 1992 • Held over gains S 140(6B) TCGA 1992, S 154 (2 A,B,C) TCGA 1992, S179 1B & 1C TCGA 1992 • Para 85A Sch 29 FA 2002 • Para 12B Sch 9 FA 1996 • Para 30B Sch 26 FA 2002 • S561A CAA 2001 2. Transfer of Assets <ul style="list-style-type: none"> • S140A TCGA 1992 • Para 85 Sch 29 FA 2002 • Para 12D Sch 9 FA 1996 • Para 30D Sch 26 FA 2002 • S561 CAA 2001 3. Partial Divisions <ul style="list-style-type: none"> • S140A TCGA 1992 • Held over gains: S140(6AA) , S154 (2D) , S179 (1AA • Para 85 Sch 29 FA 2002 • Para 12D Sch 9 FA 1996 • Para 30D Sch 26 FA 2002 • S561 CAA 2001
Article 8 1.	Tax treatment of allotment of shares on 1. Merger 2. Transfer of Assets	1. Merger <ul style="list-style-type: none"> • S140G TCGA 1992 2. Transfer of Assets <ul style="list-style-type: none"> • S140DA TCGA 1992 • S12G Sch 9 FA 1996
2.	Tax treatment of allotment of shares on partial division	<ul style="list-style-type: none"> • S. 140DA TCGA 1992 • S213A and S 218 ICTA 1988 • Para 12G Sch 9 FA 1996 Definitions: S140L TCGA 1992
3	Tax treatment of allotment of shares when entity treated as fiscally transparent.	<ul style="list-style-type: none"> • S 140I TCGA 1992 • S 140J TCGA 1992 • Para 12H Sch 9 FA 1996
Article 10 1.	Renunciation of taxing rights where assets transferred	1. Mergers <ul style="list-style-type: none"> • S140F TCGA 1992

	include a permanent establishment in another member state.	<ul style="list-style-type: none"> • Para 87A Sch 29 FA 2002 • Para 12C Sch 9 FA 1996 • Para 30C Sch 26 FA 2002 2. Transfer of Assets <ul style="list-style-type: none"> • S 140C TCGA 1992 • Para 87 Sch 29 FA 2002 • Para 12E Sch 9 FA 1996 • Para 30E Sch 26 FA 2002 3. Partial Divisions <ul style="list-style-type: none"> • S 140C TCGA 1992 • Held over gains: S140(6AA) , S154 (2D) , S179 (1AA) TCGA 1992 • Para 87 Sch 29 FA 2002 • Para 12E Sch 9 FA 1996 • Para 30E Sch 26 FA 2002 4. Definitions S140L TCGA 1992
Article 10a	Special case of transparent entities. Exercise of right to disapply provisions.	1. Share Exchange <ul style="list-style-type: none"> • S 140H TCGA 1992 2. Mergers <ul style="list-style-type: none"> • S 140J TCGA 1992 • Para 12I Sch 9 FA 1996 • Para 30H Sch 26 FA 2002 • Para 85C Sch 29 FA 2002 3. Transfer of Assets <ul style="list-style-type: none"> • S 140I TCGA 1992 • Para 12H Sch 9 FA 1996 • Para 30G Sch 26 FA 2002 • Para 85B Sch 29 FA 2002 4. Partial Divisions <ul style="list-style-type: none"> • S 140I TCGA 1992 • Para 12H Sch 9 FA 1996 • Para 30G Sch 26 FA 2002 • Para 85B Sch 29 FA 2002 5. Double taxation provisions <ul style="list-style-type: none"> • S 140K TCGA 1992 6. Definitions <ul style="list-style-type: none"> • S140L TCGA 1992 • Para 12J Sch 9 FA 1996 • Para 30I Sch 26 FA 2002 • Para 85D Sch 29 FA 2002
Article 10b,c and d	Transfer of registered office of SE and SCE	S66A FA 1988
Article 11 (1)	Anti Avoidance measures	<ul style="list-style-type: none"> • S 140B TCGA 1992 • S140D TCGA 1992 • Para 12B(6) Sch 9 FA 1996 • Para 12F Sch 9 FA 1996 • Para 30B (6) Sch 26 FA 1996 • Para 30F Sch 26 FA 2002 • S 85 Sch 29 FA 2002 • S 87 Sch 29 FA 2002

