

SCHEDULE 1

CROSS-BORDER TRANSFERS OF BUSINESS

PART 1

AMENDMENTS OF TCGA 1992

1. TCGA 1992 is amended as follows.

Division of UK business

2.—(1) Section 140A (transfer of a UK trade)(1) is amended as follows.

(2) In subsection (1)—

- (a) for “company A” substitute “the transferor”,
- (b) for “company B” substitute “the transferee”,
- (c) for “qualifying company” substitute “company”, and
- (d) for “trade” substitute “business”.

(3) After subsection (1) insert—

“(1A) This section also applies where a company transfers part of its business to one or more companies if—

- (a) the transferor is resident in one member State,
- (b) the part of the transferor’s business which is to be transferred is carried on by the transferor in the United Kingdom,
- (c) at least one transferee is resident in a member State other than that in which the transferor is resident,
- (d) the transferor company continues to carry on a business after the transfer,
- (e) the conditions in subsection (1)(c) to (e) are satisfied (for which purpose references to the transferee shall be taken as references to each of the transferees), and
- (f) either of the following conditions is satisfied.

(1B) Condition 1 is that the transfer is made in exchange for the issue of shares in or debentures of each transferee company to the persons holding shares in or debentures of the transferor.

(1C) Condition 2 is that the transfer is not made in exchange for the issue of shares in or debentures of each transferee by reason only, and to the extent only, that a transferee is prevented from complying with Condition 1 by section 658 of the Companies Act 2006(2) (rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing the issue of shares or debentures to itself.

(1D) If Condition 2 applies in relation to the whole or part of a transfer, sections 24 and 122 do not apply in relation to the transfer.”.

(4) In subsections (2) to (4)—

- (a) for “company A” substitute “the transferor”, and

(1) Sections 140A and 140B were inserted by section 44 of the Finance (No. 2) Act 1992 (c. 48).

(2) 2006 c. 46.

Status: This is the original version (as it was originally made).

- (b) for “company B” substitute “the transferee (or each of the transferees)”.
- (5) In subsection (4) for “the two companies” substitute “the transferor and the transferee (or each of the transferees)”.
- (6) Omit subsections (5), (6) and (7).
- (7) The heading accordingly becomes “Transfer or division of UK business”.
- 3. In section 140B (section 140A: anti-avoidance)—
 - (a) for “company A” substitute “the transferor”,
 - (b) for “company B” substitute “the transferee (or each of the transferees)”, and
 - (c) for “trade” substitute “business”.

Division of non-UK business

- 4.—(1) Section 140C (transfer of non-UK trade)(3) is amended as follows.
 - (2) In subsection (1)—
 - (a) for “company A” substitute “the transferor”,
 - (b) for “company B” substitute “the transferee”,
 - (c) for “qualifying company” substitute “company”, and
 - (d) for “trade” substitute “business”.
 - (3) After subsection (1) insert—
 - “(1A) This section also applies where a company resident in the United Kingdom transfers part of its business to one or more companies if—
 - (a) the part of the transferor’s business which is to be transferred is carried on, immediately before the time of the transfer, by the transferor in a member State other than the United Kingdom through a permanent establishment,
 - (b) at least one transferee is resident in a member State other than the United Kingdom,
 - (c) the transferor company continues to carry on a business after the transfer,
 - (d) the conditions in subsection (1)(b), (d), (e) and (f) are satisfied, and
 - (e) either of the following conditions is satisfied.
 - (1B) Condition 1 is that the transfer is made in exchange for the issue of shares in or debentures of each transferee company to the persons holding shares in or debentures of the transferor.
 - (1C) Condition 2 is that the transfer is not made in exchange for the issue of shares in or debentures of each transferee by reason only, and to the extent only, that a transferee is prevented from complying with Condition 1 by section 658 of the Companies Act 2006 (rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing the issue of shares or debentures to itself.”
 - (4) In subsections (3) and (8) for “company A” substitute “the transferor”.
 - (5) Omit subsections (6), (7) and (9).
 - (6) The heading accordingly becomes “Transfer or division of non-UK business”.
- 5. In section 140D (section 140C: anti-avoidance)—
 - (a) for “company A” substitute “the transferor”, and

(3) Sections 140C and 140D were inserted by section 45 of the Finance (No. 2) Act 1992.

- (b) for “trade” substitute “business”.

Treatment of securities issued on transfer of assets

6. After section 140D insert—

“Securities issued on division of business

140DA.—(1) This section applies where—

- (a) a transfer of assets to which section 140A(1A) or 140C(1A)(4) applies has taken place,
- (b) the transferor and the transferee (or each of the transferees) are each resident in a member State,
- (c) they are not all resident in the same State, and
- (e) the transfer does not constitute or form part of a scheme of reconstruction within the meaning of section 136.

(2) Where this section applies, the transfer shall be treated for the purposes of section 136 as if it were a scheme of reconstruction.

(3) Where section 136 applies by virtue of subsection (2) above section 136(6) (and section 137) shall not apply.”.

Held over gains

7. After section 140(6A) (postponement of a charge on transfer of assets to non-resident company)(5) insert—

“(6AA) If securities are transferred by a transferor company as part of the process of the transfer of a business to which section 140A or 140C applies—

- (a) the transfer shall be disregarded for the purposes of subsection (4), and
- (b) the transferee company shall be treated as if it were the transferor company in relation to—
 - (i) any subsequent disposal of the securities, and
 - (ii) any subsequent disposal by the transferee of assets to which subsection 5 applies.”.

8. After section 154(2C) (new assets which are depreciating assets) (inserted by paragraph 6 of Schedule 2) insert—

“(2D) Subsections (2A) and (2B) shall apply in relation to the transfer of an asset in circumstances where section 140A applies as they apply in relation to the transfer of an asset on a merger to which section 140E(6) applies, and for that purpose—

- (a) references to the merger shall be treated as references to the transfer,
- (b) references to section 140E shall be treated as references to section 140A, and
- (c) references to the transferor and the transferee shall be treated as references to the transferor and the transferee in relation to the asset.”.

(4) Sections 140A(1A) and 140C(1A) are inserted by paragraph 2 of Schedule 2 to these Regulations.

(5) Section 140(6A) was inserted by section 46(1) of the Finance (No. 2) Act 1992.

(6) Section 140E is inserted by paragraph 2 of Schedule 2 to these Regulations.

Status: This is the original version (as it was originally made).

9. After section 179(1A) (company ceasing to be member of group: post appointment day cases)(7) insert—

“(1AA) If shares in a company are transferred as part of the process of the transfer of a business to which section 140A or 140C applies and in consequence of the transfer the company ceases to be a member of a group (“Group 1”)—

- (a) the company shall not be treated for the purposes of this section as having left Group 1, and
- (b) if the transferee is a member of a group (“Group 2”) and in consequence of the transfer the company becomes a member of Group 2 it shall be treated, for the purposes of this section, as if Group 1 and Group 2 were the same.”.

Loan relationships

10. Section 116(8A) and (8B) (reorganisations, conversions and reconstructions)(8) shall cease to have effect.

(7) Subsections (1) and (1A) of section 179 were substituted by paragraph 4(2) of Schedule 29 to the Finance Act 2000 (c. 17).
(8) Section 116(8A) was inserted by paragraph 60(3) of Schedule 14 to the Finance Act 1996. The subsection was amended, and section 116(8B) was inserted, by paragraph 8 of Schedule 6 to the Finance (No. 2) Act 2005 (c. 22).