
STATUTORY INSTRUMENTS

2009 No. 2971

**The Mutual Societies (Transfers of
Business) (Tax) Regulations 2009**

PART 2

BUILDING SOCIETIES

Relevant transfer by a building society

4.—(1) This regulation applies if there is a relevant transfer by a building society.

(2) The Corporation Tax Acts shall have effect in relation to the relevant transfer subject to paragraphs (3) to (18).

(3) For the purposes of the allowances and charges provided for by the Capital Allowances Act 2001⁽¹⁾ a trade which is transferred or amalgamated as a result of the relevant transfer shall not be treated as permanently discontinued nor shall a new trade be treated as set up and commenced, and—

(a) there shall be made to or on the transferee in accordance with that Act all such allowances and charges as would, if the transferor had continued to carry on the trade, have fallen to be made to or on the transferor; and

(b) the amount of any such allowance or charge shall be computed as if—

(i) the transferee had been carrying on the trade since the transferor began to do so, and

(ii) everything done to or by the transferor had been done to or by the transferee (but so that no sale or transfer which, on the transfer of the trade, is made to the transferee by the transferor of any assets in use for the purpose of the trade shall be treated as giving rise to any such allowance or charge).

(4) The transferee shall be entitled to such relief under section 393(1) of ICTA (losses other than terminal losses)⁽²⁾, as for a loss sustained by the transferee in carrying on the trade, for any amount for which the transferor would have been entitled to relief if it had continued to carry on the trade.

This paragraph is subject to paragraph (5) and to any claim made by the transferor under section 393A(1) of ICTA (losses: set off against profits of the same, or an earlier, accounting period)⁽³⁾.

(5) If the amount of relevant liabilities exceeds the value of relevant assets, the transferee shall be entitled to relief by virtue of paragraph (4) only if, and only to the extent that, the amount of that excess is less than the amount mentioned in that paragraph.

(6) For the purposes of paragraph (5)—

(1) 2001 c. 2.

(2) 1988 c 1. Section 393(1) has been amended by paragraph 4 of Schedule 35 to the [Finance Act 2008](#) (c. 9).

(3) Section 393A was inserted by section 75(1) of the [Finance Act 1991](#) (c. 31) and has been relevantly amended by section 39 of the [Finance \(No. 2\) Act 1997](#) (c. 58).

- (a) the value of assets (other than money) shall be taken to be the price which they might reasonably be expected to have fetched on a sale in the open market immediately before the predecessor ceased to carry on the trade; and
- (b) the amount of liabilities shall be taken to be their amount at that time.

(7) Subsection (2A) of section 393A of ICTA (losses: set off against profits of the same, or an earlier, accounting period) shall not apply to any loss which (but for this paragraph) would fall within subsection (2B) of that section by virtue of the transferor ceasing to carry on the trade, and subsection (7) of that section shall not apply for the computation of any such loss.

(8) If, on the transferor ceasing to carry on the trade, the transferee begins to carry on the activities of the trade as part of its trade, then that part of the trade carried on by the transferee shall be treated for the purposes of this regulation as a separate trade, if the effect of so treating it is that paragraph (2) has effect on that event in relation to that separate trade.

(9) If, on the transferor ceasing to carry on part of a trade, the transferee begins to carry on the activities of that part as its trade or part of its trade, the transferor shall for the purposes of this regulation be treated as having carried on that part of its trade as a separate trade if the effect of so treating it is that paragraph (2) has effect on that event in relation to that separate trade.

(10) If, under paragraphs (8) or (9), any activities of the transferor fall, on that transferor ceasing or beginning to carry them on, to be treated as a separate trade, such apportionments of receipts, expenses, assets or liabilities shall be made as may be just and reasonable.

(11) If, by virtue of paragraph (10), any item falls to be apportioned and, at the time of the apportionment, it appears that it is material as respects the liability to tax (for whatever period) of two or more building societies or a commercial company or a subsidiary of a mutual society, any question which arises as to the manner in which the item shall be apportioned shall be determined, for the purposes of the tax of those building societies, commercial company or subsidiary of a mutual in like manner as an appeal, and all those companies shall be entitled to be a party to those proceedings.

(12) If the amount of relevant liabilities does not exceed the value of relevant assets—

- (a) paragraph (10) shall have effect as if for the words following “separate trade,” to the end of the paragraph there were substituted “any necessary apportionment shall be made of receipts or expenses.”; and
- (b) paragraph (11) shall have effect as if for “item” there were substituted “sum”.

(13) In this regulation—

“relevant assets” means—

- (a) assets vested in the transferor immediately before it ceased to carry on the trade, which were not transferred to the transferee; and
- (b) consideration given to the transferor by the transferee in respect of the relevant transfer or change of the entity carrying on the business as a consequence of the relevant transfer; and for the purposes of sub-paragraph (b) the assumption by the transferee of any liabilities of the transferor shall not be treated as the giving of consideration to the transferor by the transferee;

“relevant liabilities” means liabilities outstanding and vested in the transferor immediately before it ceased to carry on the trade which were not transferred to the transferee; but a liability representing the transferor’s share capital, share premium account, reserves or relevant loan stock is not a relevant liability.

(14) Where the transferor transferred a liability to the transferee but the creditor concerned agreed to accept settlement of part of the liability as settlement of the whole, the liability shall be treated for the purposes of paragraph (13) as not having been transferred to the transferee except as to that part.

(15) For the purposes of paragraph (13), a liability representing the transferor's share capital, share premium account, reserves or relevant loan stock shall be treated as not doing so, if, in the period of one year ending with the day on which the transferor ceased to carry on the trade, the liability arose on a conversion of a liability not representing its share capital, share premium account, reserves or relevant loan stock.

(16) Where a liability of the transferor representing its relevant loan stock is not a relevant liability for the purposes of paragraph (5) but is secured on an asset of the transferor not yet transferred to the transferee, the value of the asset shall, for the purposes of paragraph (5), be reduced by an amount equal to the amount of the liability.

(17) In this regulation "relevant loan stock" means any loan stock or similar security (whether secured or unsecured) except any in the case of which paragraph (18) applies.

(18) This paragraph applies where, at the time the liability giving rise to the loan stock or other security was incurred, the person who was the creditor was carrying on a trade of lending money.

Transfer of an asset – taxation of chargeable gains

5. If—

- (a) there is a relevant transfer within regulation 3(1)(e); and
- (b) there is a disposal of an asset by the transferor to the transferee,

the transferor and the transferee shall be treated for the purposes of corporation tax in respect of chargeable gains as if the asset were acquired from the transferor for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the transferor.

Transfer of an asset – taxation of chargeable gains – company ceasing to be member of group

6. If—

- (a) there is a relevant transfer within regulation 3(1)(a), (b) or (e);
- (b) the transferor and the transferee are not members of the same group at the time of the relevant transfer; and
- (c) as a result of the relevant transfer, a company ceases to be a member of the same group as the transferor,

section 179 of TCGA (company ceasing to be a member of group: post-appointed day cases)⁽⁴⁾ shall not apply in respect of any asset acquired by the company referred to in paragraph (c) from the transferor or from any other member of the same group as the transferor.

Transfer of an asset – company ceasing to be a member of a group – further provisions

7.—(1) This regulation applies if there is a relevant transfer within regulation 3(1)(a), (b) or (e).

(2) If this regulation applies and the transferor and the transferee—

- (a) as a result of the relevant transfer become members of the same group; but
- (b) subsequently cease to be members of the same group,

paragraph (3) applies.

(4) 1992 c. 12.

(3) If paragraph (2) is satisfied, section 179 of TCGA (company ceasing to be a member of group: post-appointed day cases)(5) shall not have effect as respects—

- (a) any asset acquired by the transferee as a consequence of the relevant transfer from the transferor or any other member of the same group; or
- (b) any asset acquired as a consequence of the relevant transfer from the transferor, or any other member of the same group, by any company which is a member of the same group as the transferor at the time of the relevant transfer.

(4) If this regulation applies and, as a result of the relevant transfer, a company which was a member of the same group as the transferor at the time of the relevant transfer—

- (a) ceases to be a member of that group;
- (b) becomes a member of the same group as the transferee; and
- (c) subsequently ceases to be a member of that group,

section 179 of TCGA shall have effect when the company ceases to be a member of the same group as the transferee as respects any relevant asset acquired by that company otherwise than from the transferee as if that asset had been acquired from the transferee.

This paragraph is subject to paragraph (6).

(5) In paragraph (4) “relevant asset” means any asset acquired by the company referred to in that paragraph from—

- (a) the transferor; or
- (b) any other company which is a member of the same group as the transferor at the time of the relevant transfer,

when the company referred to in that paragraph and the transferor, or the company referred to in that paragraph, the transferor and the other company, were members of the same group.

(6) Paragraph (4) shall not apply if the company referred to in that paragraph which acquired that asset and the company from which that asset was acquired (one being a 75 per cent subsidiary of the other) cease simultaneously to be members of the same group as the transferee but continue to be members of the same group as one another.

Transfer of loan relationship or derivative contract

8.—(1) This regulation applies if—

- (a) there is a relevant transfer by a building society;
- (b) the transferor has consistently applied appropriate accounting treatment in accordance with generally accepted accounting practice up to and including the date of the relevant transfer in respect of all loan relationships and derivative contracts shown in its balance sheet; and
- (c) as a result of the relevant transfer the transferee directly or indirectly replaces the transferor as a party to—
 - (i) the loan relationships; or
 - (ii) the derivative contracts.

(2) The transferee shall bring into account, in accordance with paragraphs (3) to (15), amounts in respect of the transfer adjustment.

(5) Section 179 has been amended by section 49 of the [Finance Act 1995 \(c. 4\)](#); by paragraphs 8 and 9 of Schedule 7 to the Finance (No. 2) Act 1997; by sections 133(2), 135(3) and 139 of the [Finance Act 1998 \(c. 36\)](#); by paragraph 4 of Schedule 29 to the [Finance Act 2000 \(c. 17\)](#); by paragraph 2 of Schedule 8 to the [Finance Act 2002 \(c. 23\)](#); by paragraph 2 of Schedule 27 to the [Finance Act 2003 \(c. 14\)](#) and by [S.I. 2007/3186](#).

(3) The “transfer adjustment” is the difference, if any, that arises on a comparison of the closing accounting balance sheet figure, adjusted for tax as appropriate, in respect of the loan relationships or the derivative contracts in the transferor’s accounts and the opening accounting balance sheet figure, adjusted for tax as appropriate, in respect of the loan relationships or derivative contracts in the transferee’s accounts.

(4) If the transferor carries out simultaneous relevant transfers of its business, within regulation 3(1)(c) of part of its business the “transfer adjustment” in respect of each transferee is to be computed by reference to the difference between the opening accounting balance sheet figure, adjusted for tax as appropriate, for the transferred loan relationships and derivative contracts in each transferee’s accounts and the closing accounting balance sheet figure, adjusted for tax as appropriate, for those same loan relationships and derivative contracts in the transferor’s accounts.

(5) For the purposes of paragraphs (3) and (4), where, in the Tax Acts, an accounting balance sheet figure is adjusted for tax, it is that adjusted figure that is to be used when calculating the transfer adjustment.

(6) The credits and debits to be brought into account as profits or deficits or losses for the purposes of Part 3, 5, 6 or 7 of CTA(6) in respect of the transferee’s transfer adjustment shall be determined in accordance with this regulation.

(7) The transferee shall bring one-sixth of the transfer adjustment (“the applicable amount”) into account for each year of a six year period (“the prescribed period”) beginning with the day on which the relevant transfer takes place. This is subject to paragraphs (8), (10) and (16).

(8) If there are two or more accounting periods falling in a year, the applicable amount for the year shall be apportioned between the accounting periods.

(9) An apportionment between accounting periods of an applicable amount in accordance with paragraph (8) shall be made according to the proportion of the year which is included in each accounting period.

(10) If the transferee ceases to be within the charge to corporation tax before the end of the prescribed period, the whole of the applicable amounts, so far as they have not been brought into account in an earlier accounting period, shall be brought into account as a credit or debit for the period ending when the transferee ceases to be within that charge. This paragraph is subject to paragraph (11).

(11) If before the end of the prescribed period—

(a) the transferee transfers the business by way of a relevant transfer within regulation 3(1) (a) or (b) to a successor building society (“A”); and,

(b) as a result of the transfer, the transferee ceases to be within the charge to corporation tax, that relevant transfer will not cause the whole of the applicable amounts, so far as they have not been brought into account in an earlier period, to be brought into account for the period in which that relevant transfer takes place.

(12) Where there is a relevant transfer to which paragraph (11) applies, paragraph (7) will apply to the applicable amounts which have not been brought into account by the transferee as if references to “the transferee” were references to “A”.

(13) If this regulation applies and the transferor has been bringing debits and credits into account in accordance with regulation 3A of the Loan Relationships and Derivative Contracts (Change of Accounting Practice) Regulations 2004(7), the relevant transfer shall be treated for the purposes of regulation 3A(6) of those Regulations as though it were a qualifying transfer.

(6) 2009 c. 4.

(7) S.I. 2004/3271. Regulation 3A was inserted by S.I. 2005/3383 and amended by S.I. 2007/3432 and 2008/3237.

(14) In paragraph (1)(c) the reference to “the transferee directly or indirectly replaces the transferor as a party” has the same meaning given by—

- (a) regulation 10 in the case of a loan relationship; and
- (b) regulation 11 in the case of a derivative contract.

(15) Paragraph (7) does not apply if the transferee has made an election under paragraph (16).

(16) If the amount of the transfer adjustment does not exceed £1.5 million, the transferee may elect to bring into account the full amount of the transfer adjustment in the accounting period in which the relevant transfer takes place.

(17) An election under paragraph (16)—

- (a) must be made—
 - (i) by notice in writing to an officer of Revenue and Customs; and
 - (ii) no later than 12 months after the end of the accounting period in which the relevant transfer took place;
- (b) must specify the amount of the transfer adjustment; and
- (c) is irrevocable.

(18) In this regulation—

“generally accepted accounting practice” has the meaning given by section 50(1) of FA 2004 (generally accepted accounting practice)(8);

“officer of Revenue and Customs” has the meaning given by section 2 of the Commissioners for Revenue and Customs Act 2005 (officers of revenue and customs)(9).

Transfer of loan relationship or derivative contract – further provisions

9.—(1) This regulation applies if—

- (a) there is a relevant transfer within regulation 3(1)(a), (b), (d) or (e); and
- (b) before the date of the relevant transfer there had been a transfer to a company of—
 - (i) a loan relationship to which section 336 of CTA (transfers of loans on group transactions) applied; or
 - (ii) a derivative contract to which section 625 of CTA (group member replacing another as party to a derivative contract) applied;

but this is subject to paragraph (6).

(2) Paragraph (3) applies if, as a result of the relevant transfer, the company referred to in paragraph (1)(b) ceases to be a member of the same group as the transferor—

- (a) before the end of the relevant six year period referred to in—
 - (i) section 344(4) of CTA (transferee leaving group after replacing transferor as party to loan relationship); or
 - (ii) section 630(4) of CTA (introduction to sections 631 and 632); and
- (b) whilst still a party to the relevant loan relationship or derivative contract.

(3) If paragraph (2) is satisfied—

- (a) the company referred to in paragraph (1)(b) shall be treated as not having ceased to be a member of the same group as the transferor;

(8) 2004 c. 12. Section 50(1) was amended by paragraphs 456 and 457 of Schedule 1 to the [Income Tax Act 2007 \(c. 3\)](#).

(9) 2005 c. 11.

- (b) in the case of a loan relationship, section 345 of CTA (transferee leaving group otherwise than because of an exempt distribution) shall not apply to the loan relationship as a result of the relevant transfer; and
 - (c) in the case of a derivative contract, section 631 of CTA (transferee leaving group otherwise than because of exempt distribution) shall not apply to the derivative contract as a result of the relevant transfer.
- (4) Paragraph (5) applies if the company referred to in paragraph (1)(b) ceases to be a member of the same group as the transferee—
- (a) before the end of the relevant six year period referred to in—
 - (i) section 344(4) of CTA (transferee leaving group after replacing transferor as party to loan relationship); or
 - (ii) section 630(4) of CTA (introduction to sections 631 and 632); and
 - (b) whilst still a party to the relevant loan relationship or derivative contract.
- (5) If paragraph (4) is satisfied—
- (a) in the case of a loan relationship, section 345 of CTA (transferee leaving group otherwise than because of an exempt distribution) shall apply to the loan relationship as a result of the relevant transfer; and
 - (b) in the case of a derivative contract, section 631 of CTA (transferee leaving group otherwise than because of exempt distribution) shall apply to the derivative contract as a result of the relevant transfer.
- (6) This regulation does not apply where a transferor of a loan relationship is regarded as using fair value accounting in respect of that loan relationship.
- (7) A transferor shall be regarded for the purposes of this regulation as using fair value accounting in respect of a loan relationship only if the credits and debits to be brought into account for the purposes of these Regulations as respects that loan relationship are determined on that basis.
- (8) It does not matter for the purposes of paragraph (7) if the transferor does not otherwise use fair value accounting in respect of the loan relationship.

Meaning of transferee replacing building society as party to a loan relationship

- 10.**—(1) References in regulation 8 to a transferee replacing a transferor as a party to a loan relationship include references to a transferee becoming party to a loan relationship which—
- (a) confers rights within paragraph (2);
 - (b) imposes obligations within paragraph (2); or
 - (c) both confers such rights and imposes such obligations.
- (2) Rights or obligations are within this paragraph if they are equivalent to those of the transferor under a loan relationship to which that transferor has ceased to be a party as a result of the relevant transfer.
- (3) For the purposes of paragraph (2), a transferor’s rights under a creditor relationship are equivalent to rights under another creditor relationship if each set of rights gives the holder of an asset representing the relationship in question—
- (a) the same rights against the same persons as to capital, interest and dividends; and
 - (b) the same remedies to enforce those rights.
- (4) For the purposes of paragraph (3), any difference in—
- (a) the total nominal amounts of the assets representing each loan relationship;
 - (b) the form in which they are held; or

(c) the way in which they can be transferred,
is ignored.

(5) For the purposes of paragraph (2), a transferee's obligations under a debtor relationship are equivalent to obligations under another debtor loan relationship if under each set of obligations the holder of the liability representing the loan relationship in question has—

- (a) the same obligations to the same persons as to capital, interest and dividends; and
- (b) the same remedies to enforce those obligations.

(6) For the purposes of paragraph (5), any difference in—

- (a) the total nominal amounts of the assets representing the creditor loan relationship corresponding to each relationship;
- (b) the form in which they are held; or
- (c) the way in which they can be transferred,

is ignored.

Meaning of transferee replacing building society as a party to a derivative contract

11.—(1) References in regulation 8 to a transferee replacing a transferor as a party to a derivative contract include references to the transferee becoming party to a derivative contract which—

- (a) confers rights within paragraph (2);
- (b) imposes obligations within paragraph (2); or
- (c) both confers such rights and imposes such obligations.

(2) Rights or obligations are within this paragraph if they are equivalent to those of the transferor under a derivative contract to which that transferor has ceased to be a party as a result of the relevant transfer.

Transfer of intangible fixed assets

12.—(1) This regulation applies if—

- (a) there is a relevant transfer within regulation 3(1)(e) which includes intangible fixed assets;
- (b) those assets are chargeable intangible assets in relation to the transferor immediately before the relevant transfer; and
- (c) those assets are chargeable intangible assets in relation to the transferee immediately after the relevant transfer.

(2) The transfer of those assets is tax-neutral for the purposes of—

- (a) these Regulations; and
- (b) Part 8 of CTA (intangible fixed assets).

(3) For the application of sections 780 (deemed realisation and reacquisition at market value) and 785 (principal company becoming member of another group) of CTA where this regulation applies, see regulation 13.

(4) This regulation and regulations 13 and 14 apply to goodwill as they apply to intangible fixed assets.

Transfer of intangible fixed assets – further provisions

13.—(1) This regulation applies if—

- (a) there is a relevant transfer within regulation 3(1)(a), (b) or (e) which includes intangible fixed assets;
 - (b) those assets are—
 - (i) chargeable intangible assets in relation to the transferor immediately before the relevant transfer; and
 - (ii) chargeable intangible assets in relation to the transferee immediately after the relevant transfer; and
 - (c) the transfer of those assets is tax-neutral for the purposes of these Regulations or Part 8 of CTA (intangible fixed assets).
- (2) If because of the relevant transfer a company ceases to be a member of the same group as the transferor, that event does not cause—
- (a) section 780 of CTA (deemed realisation and reacquisition at market value); or
 - (b) section 785 of that Act (principal company becoming member of another group),
- to apply as respects any assets acquired by the company from the transferor or any other member of the same group as the transferor.
- (3) If the transferor and transferee are members of the same group at the time of the relevant transfer but later cease to be, that later event does not cause section 780 or 785 of CTA to apply in relation to any asset to which this regulation applies.
- (4) Paragraph (3) applies to—
- (a) any asset acquired by the transferee on or before the relevant transfer from the transferor, or from any other member of the same group; or
 - (b) any asset acquired from the transferor or from any other member of the same group by a company (other than the transferee) that is a member of that group at the time of the relevant transfer.
- (5) Paragraph (6) applies if a company which is a member of the same group as the transferor at the time of the relevant transfer—
- (a) ceases to be a member of that group and becomes a member of the same group as the transferee, and
 - (b) later ceases to be a member of that group.
- (6) Section 780 of CTA (deemed realisation and reacquisition at market value) applies on that later event as if any asset to which this paragraph applies that has not been acquired from the transferee had been so acquired.
- (7) Paragraph (6) applies to—
- (a) any asset acquired by the company referred to in paragraph (5) from the transferor when that company and the transferor were members of the same group, or
 - (b) any asset acquired by the company referred to in paragraph (5) from another company which is a member of the same group at the time of the relevant transfer when the company referred to in paragraph (5), the transferor and the other company were members of the same group.
- (8) Paragraph (6) does not apply if—
- (a) the company which acquired the asset is a 75% subsidiary of the company from which it was acquired or vice versa;
 - (b) those companies cease simultaneously to be members of the same group as the transferee; and
 - (c) those companies continue to be members of the same group as one another.

Intangible fixed assets transferred as if at no gain or no loss

14.—(1) This regulation applies if—

- (a) there is a relevant transfer by a building society; and
- (b) the transferor is treated—

- (i) for the purposes of these Regulations; or

- (ii) by virtue of the provisions referred to in paragraph (2),

as disposing of any assets for a consideration of such amount as would secure that neither a gain nor a loss would accrue to the transferor on that disposal.

(2) The provisions referred to in this paragraph are—

- (a) section 215 of TCGA (disposal of assets on amalgamation of building societies)**(10)**; and
- (b) section 216 of that Act (assets transferred from society to company)**(11)**.

(3) The assets, in the hands of the transferee, shall be treated as not satisfying the general rule set out in section 882(1) of CTA (application of Part 8 to assets created or acquired on or after 1 April 2002)**(12)**.

(10) 1992 c. 12.

(11) Section 216 has been amended by Part 2(12) of Schedule 40 to the [Finance Act 2000](#) (c. 17).

(12) 2009 c. 4.