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STATUTORY INSTRUMENTS

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**2013 No. 2242**

**CORPORATION TAX**

**STAMP DUTY**

**The BRB (Residuary) Limited (Tax Consequences) Order 2013**

*Made* - - - - *5th September 2013*  
*Laid before the House of*  
*Commons* - - - - *9th September 2013*  
*Coming into force* - - *30th September 2013*

The Treasury, in exercise of the powers conferred by section 25 of the Public Bodies Act 2011<sup>(1)</sup>, makes the following Order.

**Citation and commencement**

1. This Order may be cited as the BRB (Residuary) Limited (Tax Consequences) Order 2013 and comes into force on 30th September 2013.

**Interpretation**

2. In this Order—

“BRB Residuary” means BRB (Residuary) Limited (company registration number 4146505),  
“LCR” means London & Continental Railways Limited (company registration number 2966054),

“Network Rail” means Network Rail Infrastructure Limited (company registration number 2904587),

“relevant transfer” means a transfer under a transfer scheme made by the Secretary of State for Transport under section 23 of the Public Bodies Act 2011 transferring property, rights or liabilities from BRB Residuary to the Secretary of State for Transport, LCR, Network Rail or the Rail Safety and Standards Board Limited (company registration number 04655675).

**Chargeable gains: no gain or loss on disposal**

3. For the purposes of the Taxation of Chargeable Gains Act 1992<sup>(2)</sup>—

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(1) 2011 c. 24. Corporation tax and stamp duty (in respect of which provision is made in this Order) are relevant taxes for the purposes of section 25 of the Public Bodies Act 2011.

(2) 1992 c. 12.

- (a) in relation to a disposal constituted by a relevant transfer to LCR or the Secretary of State for Transport—
  - (i) the disposal is to be treated in relation to BRB Residuary and LCR as made for a consideration such that no gain or loss accrues to BRB Residuary, and
  - (ii) for the purposes of any tax provision, sub-paragraph (i) is to be treated as one of the no gain/no loss provisions in section 288(3A)(3) of that Act (meaning of “no gain/no loss provisions”), and
- (b) in relation to a disposal constituted by a relevant transfer to Network Rail, section 17 of that Act (disposals and acquisitions treated as made at market value) is not to have effect and the disposal is to be treated as made—
  - (i) in a case where consideration in money or money’s worth is given by Network Rail or on its behalf, for a consideration equal to the amount or value of that consideration, or
  - (ii) in a case where no such consideration is given, for a consideration of nil.

### Capital allowances

4.—(1) For the purposes of allowances and charges provided for by the Capital Allowances Act 2001(4), where as a result of a relevant transfer part of a property business (“the transferred part”) ceases to be carried on by BRB Residuary and is begun to be carried on by LCR—

- (a) any allowances that could have been claimed by, or charges that would have been made on, BRB Residuary in relation to the transferred part if BRB Residuary had continued to carry on that part of the business may be claimed by, or will be made on, LCR in relation to the transferred part, and
- (b) the amount of any such allowance or charge is to be calculated as if everything done to or by BRB Residuary had been done to or by LCR,

but the relevant transfer to LCR is not to be treated as giving rise to any such allowance or charge.

- (2) For the purposes of paragraph (1)—
  - (a) the transferred part of the property business is to be treated as a separate property business carried on by LCR and any apportionments of receipts, expenses, assets and liabilities between that business and any other property business of LCR are to be made as may be just and reasonable, and
  - (b) the proportion of any allowances or charges of BRB Residuary’s property business which relate to the transferred part of the property business is to be determined on a just and reasonable basis.

### Corporation Tax: losses

5.—(1) For the purposes of computing the profits of a property business under Part 4 of the Corporation Tax Act 2009(5) (property income), where as a result of a relevant transfer part of a property business (“the transferred part”) ceases to be carried on by BRB Residuary and is begun to be carried on by LCR—

- (a) any unrelieved loss relating to the transferred part of BRB Residuary’s property business is treated as a loss (“the transferred loss”) made by LCR in the first accounting period in which it carries on that business, and

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(3) Section 288(3A) was inserted by paragraph 63 of Schedule 2 to the Finance Act 2008 (c. 9).

(4) 2001 c. 2.

(5) 2009 c. 4.

- (b) the transferred loss is not a “UK property loss” for the purposes of Part 5 of the Corporation Tax Act 2010(6) (group relief).
- (2) For the purposes of paragraph (1)—
  - (a) an unrelieved loss is the amount of any loss which—
    - (i) cannot be deducted from the total profits of BRB Residuary for the last accounting period in which it carries on the transferred part of the business, and
    - (ii) would be available for carry forward to the next accounting period of BRBR under section 62 of the Corporation Tax Act 2010 if BRB Residuary continued to carry on the business, and
  - (b) the proportion of any loss of BRB Residuary’s property business which relates to the transferred part of the property business is to be determined on a just and reasonable basis.

### **Corporation Tax: provisions**

6. For the purposes of corporation tax, where in accordance with generally accepted accounting practice a provision has been recognised in the accounts of BRB Residuary in relation to property, rights or liabilities transferred by a relevant transfer to LCR or the Secretary of State for Transport—
- (a) in computing the profits of BRB Residuary, no amount is brought into account in respect of the removal or adjustment of that provision in the accounts as a consequence of the relevant transfer, and
  - (b) in computing the profits of LCR, no amount is brought into account in respect of a provision recognised in the accounts of LCR in accordance with generally accepted accounting practice in relation to the property, rights or liabilities transferred by the relevant transfer to the extent that an amount has been brought into account as a debit in computing the profits of BRB Residuary in any accounting period in respect of a liability or charge transferred by the relevant transfer.

### **Corporation tax: loan relationships**

7. For the purposes of Part 5 of the Corporation Tax Act 2009 (loan relationships), in relation to a relevant transfer to LCR, BRB Residuary and LCR are to be treated as if they were members of the same group.

### **Stamp duty**

8. Stamp duty is not chargeable on an instrument making or executing a relevant transfer to LCR.

5th September 2013

*Robert Goodwill*  
*Anne Milton*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order deals with tax consequences in the case of a transfer (“a relevant transfer”) under a transfer scheme made under section 23 of the Public Bodies Act 2011 (c. 24) transferring property, rights or liabilities from BRB (Residuary) Limited (“BRB Residuary”) to the Secretary of State for Transport, London & Continental Railways Limited (“LCR”), Network Rail Infrastructure Limited (“Network Rail”) or the Rail Safety and Standards Board Limited. The Order deals with the tax consequences for BRB Residuary, LCR and Network Rail.

Article 3 provides that for the purposes of the Taxation of Chargeable Gains Act 1992 (c. 12) (“TCGA”) a disposal under a relevant transfer to LCR or the Secretary of State is to be treated as being for a consideration such that no gain or loss accrues to BRB Residuary. In the case of a disposal of an asset constituted by a relevant transfer to Network Rail, section 17 of TCGA (disposals and acquisitions treated as made at market value) is not to have effect. Instead, where consideration is given by Network Rail, the disposal is to be treated as made for an amount equal to the value of that consideration, and, where no such consideration is given, it is treated as made for a consideration of nil.

Article 4 provides for continuity of treatment in relation to any allowances or charges under the Capital Allowances Act 2001 (c. 2) which relate to part of BRB Residuary’s property business transferred to LCR by a relevant transfer.

Article 5 provides for the transfer of losses for corporation tax purposes in respect of unrelieved losses incurred by BRB Residuary in relation to part of BRB Residuary’s property business transferred to LCR by a relevant transfer.

Article 6 provides for provisions made in the accounts of BRB Residuary and LCR in relation to property, rights or liabilities transferred by a relevant transfer.

Article 7 provides for continuity of treatment for corporation tax purposes in the case of a relevant transfer transferring loan relationships to LCR. BRB Residuary and LCR are to be treated as if they were members of the same group.

Article 8 deals with stamp duty. Stamp duty is not chargeable on an instrument making or executing a relevant transfer to LCR.

A Tax Information and Impact Note covering this Order will be published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.