

SCHEDULE 1

Regulation 3

AMENDMENTS TO TCGA 1992

1. TCGA 1992 is amended as follows.
2. In section 116(8A)(1) (reorganisations, conversions and reconstructions) at the end insert—

“This subsection does not apply in relation to a transaction to which paragraph 12G of Schedule 9 to the Finance Act 1996 (c. 8) (exchanges etc: treatment of loan relationships) applies.”.
3. In section 140F(2)(2) (merger: assets outside UK tax charge)—
 - (a) omit “and” at the end of paragraph (d), and
 - (b) after paragraph (e) insert—

“and

 - (f) in the case of a merger to which subsection (1)(c) or (d) applies, in the course of the merger each transferor ceases to exist without being in liquidation (within the meaning given by section 247 of the Insolvency Act 1986 (c.55)).”.
4. After section 140G (treatment of securities issued on merger) insert—

“Disapplication of sections 24 and 122 where subsidiary merges with its parent

140GA. Sections 24 and 122 do not apply if—

 - (a) a merger is effected by the transfer by a company (“the transferor company”) of all of its assets and liabilities to a single company that holds the whole of the ordinary share capital in the transferor company,
 - (b) each merging company is resident in a member State,
 - (c) the merging companies are not all resident in the same State,
 - (d) section 139 does not apply in relation to the transfer, and
 - (e) in the course of the merger the transferor company ceases to exist without being in liquidation (within the meaning given by section 247 of the Insolvency Act 1986 (c. 55)).”.
5. In section 140I(1)(a)(3) (division of business or transfer of assets) for “to which section 140A(1) or 140A(1A) applies (or to which either of those provisions would apply” substitute “mentioned in section 140A(1) or (1A) (or which would be of such a kind”.
6. In section 140J(1)(a) (mergers) for “to which section 140E(1) applies” substitute “mentioned in section 140E(1)”.
7. In section 140L(1) (interpretation) after “140K” insert “and this section”.

(1) Section 116(8A) was inserted by paragraph 60(3) of Schedule 14 to the Finance Act 1996 and was amended by paragraph 8 of Schedule 6 to the Finance (No. 2) Act 2005 (c.22).

(2) Sections 140E to 140G were substituted by paragraph 2 of Schedule 2 to S.I. 2007/3186.

(3) Sections 140I to 140L were inserted by paragraph 1 of Schedule 3 to S.I. 2007/3186.

SCHEDULE 2

Regulation 3

AMENDMENTS TO FA 1996

1. Schedule 9 to FA 1996 (loan relationships: special computational provisions) is amended as follows.

2. In paragraph 12A(5A)(4) (transferee leaving group after replacing transferor as party to loan relationship) before “transfer”, in each place, insert “merger or”.

3.—(1) Paragraph 12B(5) (European cross-border merger) is amended as follows.

(2) In sub-paragraph (2)—

(a) omit “and” at the end of paragraph (c), and

(b) after paragraph (d) insert—

“and

(e) in the case of a merger to which sub-paragraph (1)(c) or (d) applies, in the course of the merger each transferor ceases to exist without being in liquidation (within the meaning given by section 247 of the Insolvency Act 1986 (c.55)).”.

(3) In sub-paragraph (3) after “determining” insert “the”.

(4) Omit sub-paragraph (5).

(5) In sub-paragraph (9) omit paragraph (d).

4. In paragraph 12C(2)(6) (double taxation relief on European cross-border merger)—

(a) omit “and” at the end of paragraph (d), and

(b) after paragraph (e) insert—

“and

(f) in the case of a merger to which sub-paragraph (1)(c) or (d) applies, in the course of the merger each transferor ceases to exist without being in liquidation (within the meaning given by section 247 of the Insolvency Act 1986 (c.55)).”.

5.—(1) Paragraph 12D(7) (cross-border transfer of business within European Community) is amended as follows.

(2) In sub-paragraph (1) for paragraph (d) substitute—

“(d) the transferee—

(i) is resident in the United Kingdom immediately after the transfer, or

(ii) is within the charge to corporation tax immediately after the transfer in accordance with section 11 of the Taxes Act 1988.”.

(3) In sub-paragraph (3) after “exchange for” insert “the issue of”.

(4) Omit sub-paragraph (5).

(5) In sub-paragraph (6) after “determining” insert “the”.

(4) Paragraph 12A was inserted by paragraph 18 of Schedule 7 to the Finance (No. 2) Act 2005 and was amended by paragraph 17 of Schedule 1 to [S.I. 2007/3186](#).

(5) Paragraph 12B was inserted by section 54(1) of the Finance (No. 2) Act 2005 and was substituted by paragraph 8 of Schedule 2 to [S.I. 2007/3186](#).

(6) Paragraph 12C was inserted by paragraph 8 of Schedule 2 to [S.I. 2007/3186](#).

(7) Paragraphs 12D to 12G were inserted by paragraph 16 of Schedule 1 to [S.I. 2007/3186](#).

6. In paragraph 12E(5) (double taxation relief on cross-border transfer of business within European Community) for “the loan relationship” substitute “an asset or liability representing a loan relationship”.

7. In paragraph 12F(3) (cross-border transfer of business within European Community: anti-avoidance requirements) for “TCGA 1992” substitute “Taxation of Chargeable Gains Act 1992 (c.12)”.

8. For paragraph 12G (exchanges etc: treatment of loan relationships) substitute—

“12G.—(1) This paragraph applies if—

- (a) sections 127 to 130 of the Taxation of Chargeable Gains Act 1992 (c. 12) apply or would apply apart from section 116(5) of that Act,
- (b) the original shares consist of or include an asset representing a loan relationship, and
- (c) condition A or B is met.

(2) Condition A is that paragraph 12B, 12C, 12D(2) or 12E(2) applies in relation to the reorganisation.

(3) Condition B is that—

- (a) sections 127 to 130 of the Taxation of Chargeable Gains Act 1992 apply (or would apply apart from section 116(5) of that Act) as a result of section 135(3) of that Act (which provides for those sections to apply to an exchange of securities as if it were a reorganisation), and
- (b) company A is resident in one member State and company B is resident in another member State.

(4) Such debits and credits shall be brought into account for the purposes of this Chapter as would be brought into account if the reorganisation were a disposal of the asset representing a loan relationship at a consideration equal to its notional carrying value (within the meaning given by paragraph 12(2)).

(5) Paragraph 12(2A) shall have effect (with any necessary modifications) in relation to this paragraph as it has effect in relation to paragraph 12.

(6) In this paragraph—

- “company A” and “company B” have the same meaning as in section 135 of the Taxation of Chargeable Gains Act 1992,
- “the original shares” has the meaning given by section 126(1) of that Act, and
- “reorganisation” includes anything to which sections 127 to 130 of that Act apply as if it were a reorganisation.”.

9.—(1) Paragraph 12H(8) (transparent entities) is amended as follows.

(2) In sub-paragraph (1)(a)—

- (a) for “to which paragraph 12D(1) or (2) applies (or to which either of those provisions would apply” substitute “mentioned in paragraph 12D(1) or (2) (or which would be of such a kind”, and
- (b) for “one of the conditions” substitute “the condition”.

(3) In sub-paragraph (2)—

- (a) in paragraph (a) for “12D(3) and 12G(6)” substitute “12D and 12G”, and

(8) Paragraphs 12H to 12J were inserted by paragraph 2 of Schedule 3 to S.I. 2007/3186.

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- (b) in paragraph (b) for “12G(6)” substitute “12G”.
- (4) In sub-paragraph (4) after “transfer of assets” insert “or liabilities representing a loan relationship”.
- (5) In sub-paragraph (5)(a) after “transfer”, in each place, insert “of those assets or liabilities”.
- 10.**—(1) Paragraph 12I (double taxation relief on European cross-border merger) is amended as follows.
- (2) In sub-paragraph (1)(a) for “to which paragraph 12B(1) applies” substitute “mentioned in paragraph 12B(1)”.
- (3) In sub-paragraph (2)—
- (a) in paragraph (a) for “12B(3) and 12G(6) shall not apply” substitute “12B and 12G shall not apply in relation to the transfer”, and
- (b) in paragraph (b) for “12G(6)” substitute “12G”.
- (4) In sub-paragraph (4) after “transfer of assets” insert “or liabilities representing a loan relationship”.
- (5) In sub-paragraph (5)(a) after “transfer”, in each place, insert “of those assets or liabilities”.
- 11.**—(1) Paragraph 12J (interpretation) is amended as follows.
- (2) In sub-paragraph (1)—
- (a) after “12I” insert “and this paragraph”, and
- (b) in sub-paragraph (b) omit “(except in paragraph 12B)”.
- (3) In sub-paragraph (2) omit “and sub-paragraph (1) above”.
- 12.** In paragraph 19A(4B)(g)(9) (adjustment on change of accounting policy) after “12” insert “12B, 12D”.

SCHEDULE 3

Regulation 3

AMENDMENTS TO FA 2002

PART 1

AMENDMENTS TO SCHEDULE 26 TO FA 2002

1. Schedule 26 to FA 2002 (derivative contracts) is amended as follows.
2. In paragraph 30A(5A)(10) (transferee leaving group after replacing transferor as party to derivative contract) before “transfer”, in each place, insert “merger or”.
- 3.—(1) Paragraph 30B(11) (European cross-border merger) is amended as follows.

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- (9) Paragraph 19A was inserted by section 52 of, and paragraph 36 of Schedule 10 to, the [Finance Act 2004 \(c. 12\)](#). Sub-paragraphs (4A) to (4D) were inserted by section 80 of, and paragraph 31 of Schedule 4 to, the [Finance Act 2005 \(c. 7\)](#). Sub-paragraph (6) was repealed by section 104 of, and Schedule 11 Part 2(7) to, the Finance Act 2005. Sub-paragraph (4B)(g) was amended by section 37 of, and paragraph 4(2) of Schedule 6 to, the [Finance \(No. 2\) Act 2005 \(c. 22\)](#).
- (10) Paragraph 30A was inserted by section 39 of, and paragraph 24(1) of Schedule 7 to, the Finance (No. 2) Act 2005 and sub-paragraph (5A) by paragraph 20 of Schedule 1 to [S.I. 2007/3186](#).
- (11) Paragraph 30B was inserted by section 55 of the Finance (No. 2) Act 2005 and was substituted by paragraph 10 of Schedule 2 to [S.I. 2007/3186](#).

- (2) In sub-paragraph (2)—
 - (a) omit “and” at the end of paragraph (c), and
 - (b) after paragraph (d) insert—
 - “and
 - (e) in the case of a merger to which sub-paragraph (1)(c) or (d) applies, in the course of the merger each transferor ceases to exist without being in liquidation (within the meaning given by section 247 of the Insolvency Act 1986 (c. 55)).”.
- (3) In sub-paragraph (3)—
 - (a) after “determining” insert “the”, and
 - (b) for “Chapter” substitute “Schedule”.
- (4) Omit sub-paragraph (5).
- (5) In sub-paragraph (8) for “(6)” substitute “(7)”.
- (6) In sub-paragraph (9) omit paragraph (d).
- 4.** In paragraph 30C(2)(**12**) (double taxation relief on European cross-border merger)—
 - (a) omit “and” at the end of paragraph (d), and
 - (b) after paragraph (e) insert—
 - “and
 - (f) in the case of a merger to which sub-paragraph (1)(c) or (d) applies, in the course of the merger each transferor ceases to exist without being in liquidation (within the meaning given by section 247 of the Insolvency Act 1986 (c. 55)).”.
- 5.—(1)** Paragraph 30D(**13**) (cross-border transfer of business within European Community) is amended as follows.
 - (2) In sub-paragraph (1) for paragraph (d) substitute—
 - “(d) the transferee—
 - (i) is resident in the United Kingdom immediately after the transfer, or
 - (ii) is within the charge to corporation tax immediately after the transfer in accordance with section 11 of the Taxes Act 1988.”.
 - (3) Omit sub-paragraph (5).
 - (4) In sub-paragraph (6)—
 - (a) after “determining” insert “the”, and
 - (b) for “Chapter” substitute “Schedule”.
- 6.—(1)** Paragraph 30G(**14**) (transparent entities) is amended as follows.
 - (2) In sub-paragraph (1)(a)—
 - (a) for “to which paragraph 30D(1) or (2) applies (or to which either of those provisions would apply” substitute “mentioned in paragraph 30D(1) or (2) (or which would be of such a kind”, and
 - (b) for “one of the conditions” substitute “the condition”.
 - (3) In sub-paragraph (2) for “30D(3)” substitute “30D”.

(12) Paragraph 30C was inserted by paragraph 10 of Schedule 2 to [S.I. 2007/3186](#).

(13) Paragraph 30D to 30F were inserted by paragraph 19 of Schedule 1 to [S.I. 2007/3186](#).

(14) Paragraphs 30G to 30I were inserted by paragraph 4 of Schedule 3 to [S.I. 2007/3186](#).

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(4) In sub-paragraph (4) for “assets” substitute “rights and liabilities under the derivative contract”.

(5) In sub-paragraph (5)(a) after “transfer”, in each place, insert “of those rights and liabilities”.

7.—(1) Paragraph 30H (double taxation relief on European cross-border merger) is amended as follows.

(2) In sub-paragraph (1)(a) for “to which paragraph 30B(1) applies” substitute “mentioned in paragraph 30B(1)”.

(3) In sub-paragraph (2) for “30B(3) shall not apply” substitute “30B shall not apply in relation to the transfer”.

(4) In sub-paragraph (4) for “assets” substitute “rights and liabilities under the derivative contract”.

(5) In sub-paragraph (5)(a) after “transfer”, in each place, insert “of those rights and liabilities”.

8.—(1) Paragraph 30I (interpretation) is amended as follows.

(2) In sub-paragraph (1)—

(a) for “30A” substitute “30B”,

(b) after “30H” insert “and this paragraph”, and

(c) in paragraph (1)(b) omit “(except in paragraph 30B)”.

(3) In sub-paragraph (2) omit “and sub-paragraph (1) above”.

9. In paragraph 50A(3B)(**15**) (adjustment on change of accounting policy) for paragraph (b) substitute—

“(b) paragraphs 28, 30B and 30D”.

PART 2

AMENDMENTS TO SCHEDULE 29 TO FA 2002

10. Schedule 29 to FA 2002 (gains and losses of a company from intangible fixed assets) is amended as follows.

11. In paragraph 85 (transfer of UK business between companies resident in different EU member States) omit sub-paragraph (1D)(**16**).

12.—(1) Paragraph 85A(**17**) (European cross-border merger: transfer of UK business) is amended as follows.

(2) In sub-paragraph (5) omit paragraph (d) (but not the “and” following it).

(3) Omit sub-paragraph (6).

(4) In sub-paragraph (8) for “the transfer” substitute “the merger”.

13.—(1) Paragraph 85B(**18**) (transparent entities) is amended as follows.

(15) Paragraph 50A was inserted by section 52 of, and paragraph 67 of Schedule 10 to, the Finance Act 2004. Sub-paragraphs (3A) to (3D) were inserted by Schedule 26 to the Finance Act 2002 and articles 5 and 12 of [S.I. 2004/3270](#). Sub-paragraph (3B) (b) was substituted by Schedule 26 to the Finance Act 2002 ([c. 23](#)) and articles 2 and 28 of [S.I. 2006/3269](#).

(16) Sub-paragraphs (1) to (1D) were substituted for sub-paragraph (1) by paragraph 21 of Schedule 1 to [S.I. 2007/3186](#).

(17) Paragraph 85A was inserted by section 52 of the Finance Act (No.2) Act 2005 and was substituted by paragraph 11 of Schedule 2 to [S.I. 2007/3186](#).

(18) Paragraphs 85B to 85D were inserted by paragraph 5 of Schedule 3 to [S.I. 2007/3186](#).

(2) In sub-paragraph (1)(a) for “to which paragraph 85(1) or (1A) applies (or to which either of those provisions would apply)” substitute “mentioned in paragraph 85(1) or (1A) (or which would be of such a kind”.

(3) In sub-paragraph (2) for “85(2)” substitute “85”.

(4) In sub-paragraph (4) for “assets” substitute “intangible fixed assets”.

(5) In sub-paragraph (5)(a) after “transfer”, in each place, insert “of those intangible fixed assets”.

14.—(1) Paragraph 85C (double taxation relief on European cross-border merger) is amended as follows.

(2) In sub-paragraph (1)(a) for “to which paragraph 85A(1) applies” substitute “mentioned in paragraph 85A(1)”.

(3) In sub-paragraph (2) for “85A(3) shall not apply” substitute “85A shall not apply in relation to the transfer”.

(4) In sub-paragraph (4) for “assets” substitute “intangible fixed assets”.

(5) In sub-paragraph (5)(a) after “transfer”, in each place, insert “of those intangible fixed assets”.

15.—(1) Paragraph 85D (interpretation of paragraphs 85B and 85C) is amended as follows.

(2) In sub-paragraph (1) for “85B and 85C” substitute “85, 85A, 85B, 85C, 87 and 87A and this paragraph”.

(3) In sub-paragraph (2) for “those paragraphs” substitute “paragraphs 85B and 85C”.

16.—(1) Paragraph 87 (transfer of non-UK business) is amended as follows.

(2) In sub-paragraph (2) for “those assets”, in the first place, substitute “the intangible fixed assets”.

(3) In sub-paragraph (3)(a) after “transfer” insert “of those intangible fixed assets”.

17.—(1) Paragraph 87A(19) (European cross-border merger: transfer of non-UK business) is amended as follows.

(2) In sub-paragraph (2) —

(a) omit “and” at the end of paragraph (f), and

(b) after paragraph (g) insert—

“and

(h) in the case of a merger to which sub-paragraph (1)(c) or (d) applies, in the course of the merger each transferor ceases to exist without being in liquidation (within the meaning given by section 247 of the Insolvency Act 1986 (c.55)).”.

(3) In sub-paragraph (5) omit paragraph (d) (but not the “and” following it).

18. In paragraph 88(1)(20) (procedure on application for clearance) for “85A(7)” substitute “85A(8)”.

(19) Paragraph 87A was inserted by section 53 of the Finance (No 2) Act 2005 and was substituted by paragraph 12 of Schedule 2 to S.I. 2007/3186.

(20) Paragraph 88(1) was amended by section 59(5) of the Finance (No. 2) Act 2005.

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SCHEDULE 4

Regulation 6

TRANSITIONAL: REFERENCES TO COMPANIES ACT 2006

1. The provisions mentioned in regulation 6 are as follows.
2. In TCGA 1992—
 - (a) section 140A(1C)(**21**) (transfer of a UK trade),
 - (b) section 140C(1C)(**22**)(transfer of a non-UK trade),
 - (c) section 140E(2)(d) (merger leaving assets within UK tax charge), and
 - (d) section 140F(2)(e) (merger: assets outside UK tax charge).
3. In FA 1996—
 - (a) paragraph 12B(2)(d) of Schedule 9 (European cross-border merger),
 - (b) paragraph 12C(2)(e) of Schedule 9 (double taxation relief on European cross-border merger),
 - (c) paragraph 12D(4) of Schedule 9 (cross-border transfer of business within European Community), and
 - (d) paragraph 12E(4) of Schedule 9 (double taxation relief on cross-border transfer of business within European Community).
4. In FA 2002—
 - (a) paragraph 30B(2)(d) of Schedule 26 (European cross-border merger),
 - (b) paragraph 30C(2)(e) of Schedule 26 (double taxation relief on European cross-border merger),
 - (c) paragraph 30D(4) of Schedule 26 (cross-border transfer of business within European Community),
 - (d) paragraph 30E(4) of Schedule 26 (double taxation relief on cross-border transfer of business within European Community),
 - (e) paragraph 85(1C) of Schedule 29 (transfer of UK business between companies resident in different EU member States),
 - (f) paragraph 85A(2)(d) of Schedule 29 (European cross-border merger: transfer of UK business),
 - (g) paragraph 87(1D)(**23**) of Schedule 29 (transfer of non-UK business), and
 - (h) paragraph 87A(2)(g) of Schedule 29 (European cross-border merger: transfer of non-UK business).

(21) Section 140A was inserted by section 44 of the Finance (No. 2) Act 1992 (c. 48) and subsection(1D) by paragraph 2 of Schedule 1 to [S.I. 2007/3186](#).

(22) Section 140C was inserted by section 45 of the Finance (No. 2) Act 1992 and subsection (1C) by paragraph 4 of Schedule 1 to [S.I. 2007/3186](#).

(23) Sub-paragraphs (1) to (1D) of paragraph 87 were substituted for sub-paragraph (1) of that paragraph by paragraph 22 of Schedule 1 to [S.I. 2007/3186](#).