
Status: Point in time view as at 08/07/2008.

Changes to legislation: *Taxation of Chargeable Gains Act 1992, Cross Heading: Mergers within European Community is up to date with all changes known to be in force on or before 09 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*



Taxation of Chargeable Gains Act 1992

1992 CHAPTER 12

PART IV

SHARES, SECURITIES, OPTIONS ETC.

CHAPTER II

REORGANISATION OF SHARE CAPITAL, CONVERSION OF SECURITIES ETC.

^{F1}Mergers within European Community

Textual Amendments

- F1** Ss. 140E-140G and cross-heading substituted (with effect in accordance with reg. 3(2) of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2007 \(S.I. 2007/3186\)](#), reg. 1(2), [Sch. 2 para. 2](#)

140E Merger leaving assets within UK tax charge

- (1) This section applies on a merger which satisfies the conditions specified in subsection (2), where—
- (a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation [\(EC\) 2157/2001](#) on the Statute for a European Company (Societas Europaea),
 - (b) an SCE is formed by the merger of two or more cooperative societies, at least one of which is a society registered under the Industrial and Provident Societies Act 1965, in accordance with Articles 2(1) and 19 of Council Regulation [\(EC\) 1435/2003](#) on the Statute for a European Cooperative Society (SCE),
 - (c) the merger is effected by the transfer by one or more companies of all their assets and liabilities to a single existing company, or

Status: Point in time view as at 08/07/2008.

Changes to legislation: Taxation of Chargeable Gains Act 1992, Cross Heading: Mergers within European Community is up to date with all changes known to be in force on or before 09 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (d) the merger is effected by the transfer by two or more companies of all their assets and liabilities to a single new company (other than an SE or an SCE) in exchange for the issue by the transferee, to each person holding shares in or debentures of a transferor, of shares or debentures.
- (2) The conditions mentioned in subsection (1) are that —
- (a) each of the merging companies is resident in a member State,
 - (b) the merging companies are not all resident in the same State,
 - (c) section 139 does not apply to any qualifying transferred assets,
 - (d) in the case of a merger to which subsection (1)(a), (b) or (c) applies, either—
 - (i) the transfer of assets and liabilities is made in exchange for the issue by the transferee, to each person holding shares in or debentures of a transferor, of shares or debentures, or
 - (ii) sub-paragraph (i) is not satisfied by reason only, and to the extent only, that the transferee is prevented from complying with sub-paragraph (i) by section 658 of the Companies Act 2006 (rule against limited company acquiring own shares) or a corresponding provision of the law of another member State preventing the issue of shares or debentures to itself, and
 - (e) 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).
- (3) Where this section applies, qualifying transferred assets shall be treated for the purposes of corporation tax on chargeable gains as if acquired by the transferee for a consideration resulting in neither gain nor loss for the transferor.
- (4) For the purposes of subsections (2) and (3) an asset is a qualifying transferred asset if—
- (a) it is transferred to the transferee as part of the process of the merger, and
 - (b) subsections (5) and (6) are satisfied in respect of it.
- (5) This subsection is satisfied in respect of a transferred asset if—
- (a) the transferor is resident in the United Kingdom at the time of the transfer, or
 - (b) any gain that would have accrued to the transferor, had it disposed of the asset immediately before the time of the transfer, would have been a chargeable gain forming part of the transferor's chargeable profits in accordance with section 10B.
- (6) This subsection is satisfied in respect of a transferred asset if—
- (a) the transferee is resident in the United Kingdom at the time of the transfer, or
 - (b) any gain that would accrue to the transferee were it to dispose of the asset immediately after the transfer would be a chargeable gain forming part of the transferee's chargeable profits in accordance with section 10B.
- (7) If subsection (2)(d)(ii) applies in relation to a transfer of assets and liabilities on a merger (in whole or in part), sections 24 and 122 do not apply.
- (8) This section does not apply in relation to a merger if—
- (a) it is not effected for bona fide commercial reasons, or
 - (b) it forms part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax,

Status: Point in time view as at 08/07/2008.

Changes to legislation: Taxation of Chargeable Gains Act 1992, Cross Heading: Mergers within European Community is up to date with all changes known to be in force on or before 09 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

and section 138 (clearance in advance) shall apply to this subsection as it applies to section 137 (with any necessary modifications).

(9) In this section—

- (a) “cooperative society” means a society registered under the Industrial and Provident Societies Act 1965 or a similar society established in accordance with the law of a member State other than the United Kingdom,
- (b) “transferor” means—
 - (i) in relation to a merger to which subsection (1)(a) applies, each company merging to form the SE,
 - (ii) in relation to a merger to which subsection (1)(b) applies, each cooperative society merging to form the SCE, and
 - (iii) in relation to a merger to which subsection (1)(c) or (d) applies, each company transferring all of its assets and liabilities,
- (c) “transferee” means—
 - (i) in relation to a merger to which subsection (1)(a) applies, the SE,
 - (ii) in relation to a merger to which subsection (1)(b) applies, the SCE, and
 - (iii) in relation to a merger to which subsection (1)(c) or (d) applies, the company to which assets and liabilities are transferred, and
- (d) references in subsections (1)(c) and (2) to (7) to a company include references to a cooperative society.

Modifications etc. (not altering text)

- C1** S. 140E(2)(d) modified (temp.) (8.7.2008) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2008 \(S.I. 2008/1579\)](#), regs. 1(2), 6(1), [Sch. 4 para. 2\(c\)](#) (with reg. 6(2))

140F Merger: assets outside UK tax charge

- (1) This section applies on a merger which satisfies the conditions specified in subsection (2), where—
- (a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation [\(EC\) 2157/2001](#) on the Statute for a European Company (Societas Europaea),
 - (b) an SCE is formed by the merger of two or more cooperative societies, at least one of which is a society registered under the Industrial and Provident Societies Act 1965, in accordance with Articles 2(1) and 19 of Council Regulation [\(EC\) 1435/2003](#) on the Statute for a European Cooperative Society (SCE),
 - (c) the merger is effected by the transfer by one or more companies of all their assets and liabilities to a single existing company, or
 - (d) the merger is effected by the transfer by two or more companies of all their assets and liabilities to a single new company (other than an SE or an SCE) in exchange for the issue by the transferee, to each person holding shares in or debentures of a transferor, of shares or debentures.
- (2) The conditions mentioned in subsection (1) are that—
- (a) each merging company is resident in a member State,
 - (b) the merging companies are not all resident in the same State,

Status: Point in time view as at 08/07/2008.

Changes to legislation: Taxation of Chargeable Gains Act 1992, Cross Heading: Mergers within European Community is up to date with all changes known to be in force on or before 09 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (c) in the course of the merger a company resident in the United Kingdom (“company A”) transfers to a company resident in another member State (“company B”) all assets and liabilities relating to a business which company A carried on in a member State other than the United Kingdom through a permanent establishment,
 - (d) the aggregate of the chargeable gains accruing to company A on the transfer exceeds the aggregate of any allowable losses so accruing, ^{F2}...
 - (e) in the case of a merger to which subsection (1)(a), (b) or (c) applies, either—
 - (i) the transfer of assets and liabilities is made in exchange for the issue by the transferee, to each person holding shares in or debentures of a transferor, of shares or debentures, or
 - (ii) sub-paragraph (i) is not satisfied by reason only, and to the extent only, that the transferee is prevented from complying with sub-paragraph (i) by section 658 of the Companies Act 2006 (rule against limited company acquiring own shares) or a corresponding provision of the law of another member State preventing the issue of shares or debentures to itself ^{F3}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)).]
- (3) Where this section applies, for the purposes of this Act—
- (a) the allowable losses accruing to company A on the transfer shall be set off against the chargeable gains so accruing, and
 - (b) the transfer shall be treated as giving rise to a single chargeable gain equal to the aggregate of those gains after deducting the aggregate of those losses.
- (4) Where this section applies, section 815A of the Taxes Act (transfer of a non-UK trade) shall also apply.
- (5) Subsections (8) and (9) of section 140E apply for the purposes of this section as they apply for the purposes of that section.

Textual Amendments

- F2** Word in s. 140F(2)(d) omitted (with effect in accordance with reg. 3 of the amending S.I.) by virtue of [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2008 \(S.I. 2008/1579\)](#), reg. 1(2), [Sch. 1 para. 3\(a\)](#)
- F3** S. 140F(2)(f) and preceding word inserted (with effect in accordance with reg. 3 of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2008 \(S.I. 2008/1579\)](#), reg. 1(2), [Sch. 1 para. 3\(b\)](#)

Modifications etc. (not altering text)

- C2** S. 140F(2)(e) modified (temp.) (8.7.2008) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2008 \(S.I. 2008/1579\)](#), regs. 1(2), 6(1), [Sch. 4 para. 2\(d\)](#) (with reg. 6(2))

140G Treatment of securities issued on merger

- (1) This section applies on a merger which satisfies the conditions specified in subsection (2), where—

Status: Point in time view as at 08/07/2008.

Changes to legislation: Taxation of Chargeable Gains Act 1992, Cross Heading: Mergers within European Community is up to date with all changes known to be in force on or before 09 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea),
 - (b) an SCE is formed by the merger of two or more cooperative societies, at least one of which is a society registered under the Industrial and Provident Societies Act 1965, in accordance with Articles 2(1) and 19 of Council Regulation (EC) 1435/2003 on the Statute for a European Cooperative Society (SCE),
 - (c) the merger is effected by the transfer by one or more companies of all their assets and liabilities to a single existing company in exchange for the issue by the transferee, to each person holding shares in or debentures of a transferor, of shares or debentures, or
 - (d) the merger is effected by the transfer by two or more companies of all their assets and liabilities to a single new company (other than an SE or an SCE) in exchange for the issue by the transferee, to each person holding shares in or debentures of a transferor, of shares or debentures.
- (2) The conditions mentioned in subsection (1) are that—
- (a) each of the merging companies is resident in a member State,
 - (b) the merging companies are not all resident in the same State, and
 - (c) the merger does not constitute or form part of a scheme of reconstruction within the meaning of section 136.
- (3) Where this section applies, the merger shall be treated for the purposes of section 136 as if it were a scheme of reconstruction.
- (4) Where section 136 applies by virtue of subsection (3) above section 136(6) (and section 137) shall not apply.
- (5) Subsections (8) and (9) of section 140E apply for the purposes of this section as they apply for the purposes of that section.]

[^{F4}140GA] Disapplication of sections 24 and 122 where subsidiary merges with its parent

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).]

Textual Amendments

- F4** S. 140GA inserted (with effect in accordance with reg. 3 of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2008 \(S.I. 2008/1579\)](#), reg. 1(2), **Sch. 1 para. 4**

Status:

Point in time view as at 08/07/2008.

Changes to legislation:

Taxation of Chargeable Gains Act 1992, Cross Heading: Mergers within European Community is up to date with all changes known to be in force on or before 09 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.