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.

Modifications etc. (not altering text)

C1 Pt. IV Ch. II modified (1.1.1999) by The European Single Currency (Taxes) Regulations 1998 (S.I. 1998/3177), regs. 1, 39

C2 Pt. IV Ch. II modified (with effect in accordance with s. 63(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 15 para. 88**

Reorganisation or reduction of share capital

126 Application of sections 127 to 131.

(1) For the purposes of this section and sections 127 to 131 "reorganisation" means a reorganisation or reduction of a company's share capital, and in relation to the reorganisation—

(a) "original shares" means shares held before and concerned in the reorganisation,

(b) "new holding" means, in relation to any original shares, the shares in and debentures of the company which as a result of the reorganisation represent the original shares (including such, if any, of the original shares as remain).

(2) The reference in subsection (1) above to the reorganisation of a company's share capital includes—

(a) any case where persons are, whether for payment or not, allotted shares in or debentures of the company in respect of and in proportion to (or as nearly as may be in proportion to) their holdings of shares in the company or of any class of shares in the company, and

(b) any case where there are more than one class of share and the rights attached to shares of any class are altered.

(3) The reference in subsection (1) above to a reduction of share capital does not include the paying off of redeemable share capital, and where shares in a company are redeemed by the company otherwise than by the issue of shares or debentures (with or without other consideration) and otherwise than in a liquidation, the shareholder shall be treated as disposing of the shares at the time of the redemption.

127 Equation of original shares and new holding.

Subject to sections 128 to 130, a reorganisation shall not be treated as involving any disposal of the original shares or any acquisition of the new holding or any part of it, but the original shares (taken as a single asset) and the new holding (taken as a single asset) shall be treated as the same asset acquired as the original shares were acquired.

Modifications etc. (not altering text)

C3 Ss. 127-131 excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1), **Sch. 7 para. 7(1)(a)** (with Sch. 7 para. 9(1))

C4 Ss. 127-131 restricted by The Personal Equity Plan Regulations 1989 (S.I. 1989/469), reg. 27(3) (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by S.I. 1998/1869, regs. 1(1), 12)

C5 Ss. 127-131 restricted (6.4.1999) by The Individual Savings Account Regulations 1998 (S.I. 1998/1870), regs. 1, **34(4)**

C6 S. 127 applied (with effect in accordance with s. 63(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 15 para. 80(1)**

C7 S. 127 modified (with effect in accordance with s. 63(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 15 para. 84(2)** (with s. 84(1))

C8 Ss. 127-130 excluded (with effect in accordance with s. 63(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 15 para. 81(1)**

C9 Ss. 127-130 excluded (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 14 para. 58**

C10 S. 127 modified (with effect in accordance with s. 63(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 15 para. 93(7)**

C11 Ss. 127-130 applied by Finance Act 1996 (c. 8), s. 93B(3)(a) (as inserted (with effect in accordance with Sch. 11 paras. 7, 8 of the amending Act) by Finance Act 2002 (c. 23), s. 77(1) (with s. 77(2)))

C12 Ss. 127-130 excluded (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, **Sch. 2 para. 88** (with Sch. 7)

C13 S. 127 applied (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **ss. 462(2)**, 723 (with Sch. 7)

C14 S. 127 excluded (with effect in accordance with reg. 1(2) of the amending S.I.) by The Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964), regs. 1(1), **66(1)**

128 Consideration given or received by holder.

(1) Subject to subsection (2) below, where, on a reorganisation, a person gives or becomes liable to give any consideration for his new holding or any part of it, that consideration shall in relation to any disposal of the new holding or any part of it be treated as having

been given for the original shares, and if the new holding or part of it is disposed of with a liability attaching to it in respect of that consideration, the consideration given for the disposal shall be adjusted accordingly.

(2) There shall not be treated as consideration given for the new holding or any part of it—

(a) any surrender, cancellation or other alteration of the original shares or of the rights attached thereto, or

(b) any consideration consisting of any application, in paying up the new holding or any part of it, of assets of the company or of any dividend or other distribution declared out of those assets but not made,

and, in the case of a reorganisation on or after 10th March 1981, any consideration given for the new holding or any part of it otherwise than by way of a bargain made at arm's length shall be disregarded to the extent that its amount or value exceeds the relevant increase in value; and for this purpose "the relevant increase in value" means the amount by which the market value of the new holding immediately after the reorganisation exceeds the market value of the original shares immediately before the reorganisation.

(3) Where on a reorganisation a person receives (or is deemed to receive), or becomes entitled to receive, any consideration, other than the new holding, for the disposal of an interest in the original shares, and in particular—

(a) where under section 122 he is to be treated as if he had in consideration of a capital distribution disposed of an interest in the original shares, or

(b) where he receives (or is deemed to receive) consideration from other shareholders in respect of a surrender of rights derived from the original shares,

he shall be treated as if the new holding resulted from his having for that consideration disposed of an interest in the original shares (but without prejudice to the original shares and the new holding being treated in accordance with section 127 as the same asset).

(4) Where for the purpose of subsection (3) above it is necessary in computing the gain or loss accruing on the disposal of the interest in the original shares mentioned in that subsection to apportion the cost of acquisition of the original shares between what is disposed of and what is retained, the apportionment shall be made in the like manner as under section 129.

Modifications etc. (not altering text)

C3 Ss. 127-131 excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1), **Sch. 7 para. 7(1)(a)** (with Sch. 7 para. 9(1))

C4 Ss. 127-131 restricted by The Personal Equity Plan Regulations 1989 (S.I. 1989/469), reg. 27(3) (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by S.I. 1998/1869, regs. 1(1), 12)

C5 Ss. 127-131 restricted (6.4.1999) by The Individual Savings Account Regulations 1998 (S.I. 1998/1870), regs. 1, **34(4)**

C8 Ss. 127-130 excluded (with effect in accordance with s. 63(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 15 para. 81(1)**

C9 Ss. 127-130 excluded (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 14 para. 58**

C11 Ss. 127-130 applied by Finance Act 1996 (c. 8), s. 93B(3)(a) (as inserted (with effect in accordance with Sch. 11 paras. 7, 8 of the amending Act) by Finance Act 2002 (c. 23), s. 77(1) (with s. 77(2)))

C12 Ss. 127-130 excluded (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, **Sch. 2 para. 88** (with Sch. 7)

129 Part disposal of new holding.

Subject to section 130(2), where for the purpose of computing the gain or loss accruing to a person from the acquisition and disposal of any part of the new holding it is necessary to apportion the cost of acquisition of any of the original shares between what is disposed of and what is retained, the apportionment shall be made by reference to market value at the date of the disposal (with such adjustment of the market value of any part of the new holding as may be required to offset any liability attaching thereto but forming part of the cost to be apportioned).

Modifications etc. (not altering text)

C3 Ss. 127-131 excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1), **Sch. 7 para. 7(1)(a)** (with Sch. 7 para. 9(1))

C4 Ss. 127-131 restricted by The Personal Equity Plan Regulations 1989 (S.I. 1989/469), reg. 27(3) (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by S.I. 1998/1869, regs. 1(1), 12)

C5 Ss. 127-131 restricted (6.4.1999) by The Individual Savings Account Regulations 1998 (S.I. 1998/1870), regs. 1, **34(4)**

C8 Ss. 127-130 excluded (with effect in accordance with s. 63(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 15 para. 81(1)**

C9 Ss. 127-130 excluded (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 14 para. 58**

C11 Ss. 127-130 applied by Finance Act 1996 (c. 8), s. 93B(3)(a) (as inserted (with effect in accordance with Sch. 11 paras. 7, 8 of the amending Act) by Finance Act 2002 (c. 23), s. 77(1) (with s. 77(2)))

C12 Ss. 127-130 excluded (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, **Sch. 2 para. 88** (with Sch. 7)

130 Composite new holdings.

(1) This section shall apply to a new holding—

(a) if it consists of more than one class of shares in or debentures of the company and one or more of those classes is of shares or debentures which, at any time not later than the end of the period of 3 months beginning with the date on which the reorganisation took effect, or of such longer period as the Board may by notice allow, **[**[F1]were listed**]** on a recognised stock exchange [F2]... , or

(b) if it consists of more than one class of rights of unit holders and one or more of those classes is of rights the prices of which were published daily by the managers of the scheme at any time not later than the end of that period of 3 months (or longer if so allowed).

(2) Where for the purpose of computing the gain or loss accruing to a person from the acquisition and disposal of the whole or any part of any class of shares or debentures or rights of unit holders forming part of a new holding to which this section applies it is necessary to apportion costs of acquisition between what is disposed of and what is retained, the cost of acquisition of the new holding shall first be apportioned between the entire classes of shares or debentures or rights of which it consists by reference to market value on the first day (whether that day fell before the reorganisation took effect or later) on which market values or prices were quoted or published for the

shares, debentures or rights as mentioned in subsection (1)(a) or (1)(b) above (with such adjustment of the market value of any class as may be required to offset any liability attaching thereto but forming part of the cost to be apportioned).

(3) For the purposes of this section the day on which a reorganisation involving the allotment of shares or debentures or unit holders' rights takes effect is the day following the day on which the right to renounce any allotment expires.

Textual Amendments

F1 Words in s. 130(1)(a) substituted (19.7.2007) by Finance Act 2007 (c. 11), **Sch. 26 para. 8(2)(a)**

F2 Words in s. 130(1)(a) repealed (19.7.2007) by Finance Act 2007 (c. 11), Sch. 26 para. 8(2)(b), **Sch. 27 Pt. 6(5)**

Modifications etc. (not altering text)

C3 Ss. 127-131 excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1), **Sch. 7 para. 7(1)(a)** (with Sch. 7 para. 9(1))

C4 Ss. 127-131 restricted by The Personal Equity Plan Regulations 1989 (S.I. 1989/469), reg. 27(3) (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by S.I. 1998/1869, regs. 1(1), 12)

C5 Ss. 127-131 restricted (6.4.1999) by The Individual Savings Account Regulations 1998 (S.I. 1998/1870), regs. 1, **34(4)**

C8 Ss. 127-130 excluded (with effect in accordance with s. 63(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 15 para. 81(1)**

C9 Ss. 127-130 excluded (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 14 para. 58**

C11 Ss. 127-130 applied by Finance Act 1996 (c. 8), s. 93B(3)(a) (as inserted (with effect in accordance with Sch. 11 paras. 7, 8 of the amending Act) by Finance Act 2002 (c. 23), s. 77(1) (with s. 77(2)))

C12 Ss. 127-130 excluded (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, **Sch. 2 para. 88** (with Sch. 7)

131 Indexation allowance.

(1) This section applies where—

(a) by virtue of section 127, on a reorganisation the original shares (taken as a single asset) and the new holding (taken as a single asset) fall to be treated as the same asset acquired as the original shares were acquired; and

(b) on the reorganisation, a person gives or becomes liable to give any consideration for his new holding or any part of it.

(2) Where this section applies, so much of the consideration referred to in subsection (1)(b) above as, on a disposal to which section 53 applies of the new holding, will, by virtue of section 128(1), be treated as having been given for the original shares, shall be treated for the purposes of section 54 as an item of relevant allowable expenditure incurred not at the time the original shares were acquired but at the time the person concerned gave or became liable to give the consideration (and, accordingly, section 54(4) shall not apply in relation to that item of expenditure).

Modifications etc. (not altering text)

C3 Ss. 127-131 excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1), **Sch. 7 para. 7(1)(a)** (with Sch. 7 para. 9(1))

C4 Ss. 127-131 restricted by The Personal Equity Plan Regulations 1989 (S.I. 1989/469), reg. 27(3) (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by S.I. 1998/1869, regs. 1(1), 12)

C5 Ss. 127-131 restricted (6.4.1999) by The Individual Savings Account Regulations 1998 (S.I. 1998/1870), regs. 1, **34(4)**

Conversion of securities

132 Equation of converted securities and new holding.

(1) Sections 127 to 131 shall apply with any necessary adaptations in relation to the conversion of securities as they apply in relation to a reorganisation (that is to say, a reorganisation or reduction of a company's share capital).

(2) This section has effect subject to sections 133 and 134.

(3) For the purposes of this section and section 133—

(a) "conversion of securities" includes **[**F3any of the following, whether effected by a transaction or occurring in consequence of the operation of the terms of any security or of any debenture which is not a security, that is to say**]**—

(i) a conversion of securities of a company into shares in the company, and

[F4(ia) a conversion of a security which is not a qualifying corporate bond into a security of the same company which is such a bond, and

(ib) a conversion of a qualifying corporate bond into a security which is a security of the same company but is not such a bond, and**]**

(ii) a conversion at the option of the holder of the securities converted as an alternative to the redemption of those securities for cash, and

(iii) any exchange of securities effected in pursuance of any enactment (including an enactment passed after this Act) which provides for the compulsory acquisition of any shares or securities and the issue of securities or other securities instead,

(b) "security" includes any loan stock or similar security whether of the Government of the United Kingdom or of any other government, or of any public or local authority in the United Kingdom or elsewhere, or of any company, and whether secured or unsecured.

[F5(4) In subsection (3)(a)(ia) above the reference to the conversion of a security of a company into a qualifying corporate bond includes a reference to—

(a) any such conversion of a debenture of that company that is deemed to be a security for the purposes of section 251 as produces a security of that company which is a qualifying corporate bond; and

(b) any such conversion of a security of that company, or of a debenture that is deemed to be a security for those purposes, as produces a debenture of that company which, when deemed to be a security for those purposes, is such a bond.

(5) In subsection (3)(a)(ib) above the reference to the conversion of a qualifying corporate bond into a security of the same company which is not such a bond includes a reference to any conversion of a qualifying corporate bond which produces a debenture which—

(a) is not a security; and

(b) when deemed to be a security for the purposes of section 251, is not such a bond.**]**

Textual Amendments

F3 Words in s. 132(3)(a) inserted (with effect in accordance with s. 88(6) of the amending Act) by Finance Act 1997 (c. 16), **s. 88(2)(a)**

F4 S. 132(3)(ia)(ib) inserted (with effect in accordance with s. 88(6) of the amending Act) by Finance Act 1997 (c. 16), **s. 88(2)(b)**

F5 S. 132(4)(5) inserted (with effect in accordance with s. 88(6) of the amending Act) by Finance Act 1997 (c. 16), **s. 88(3)**

Modifications etc. (not altering text)

C15 S. 132 applied (retrospective to 31.12.1995) by Finance Act 1996 (c. 8), **s. 203(10)**

133 Premiums on conversion of securities.

(1) This section applies where, on a conversion of securities, a person receives, or becomes entitled to receive, any sum of money ("the premium") which is by way of consideration (in addition to his new holding) for the disposal of the converted securities.

(2) If **F6**... the premium is small, as compared with the value of the converted securities, **F6**...—

(a) receipt of the premium shall not be treated for the purposes of this Act as a disposal of part of the converted securities, and

(b) the premium shall be deducted from any expenditure allowable under this Act as a deduction in computing a gain or loss on the disposal of the new holding by the person receiving or becoming entitled to receive the premium.

F7(3) . . . . . .

(4) Where the allowable expenditure is less than the premium (or is nil)—

(a) **[F8**subsection (2)**]** above shall not apply, and

(b) if the recipient so elects (and there is any allowable expenditure)—

(i) the amount of the premium shall be reduced by the amount of the allowable expenditure, and

(ii) none of that expenditure shall be allowable as a deduction in computing a gain accruing on the occasion of the conversion, or on any subsequent occasion.

(5) In subsection (4) above "allowable expenditure" means expenditure which immediately before the conversion was attributable to the converted securities under paragraphs (a) and (b) of section 38(1).

Textual Amendments

F6 Words in s. 133(2) repealed (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 20 para. 53(1), **Sch. 41 Pt. V(10)**

F7 S. 133(3) repealed (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 20 para. 53(2), **Sch. 41 Pt. V(10)**

F8 Words in s. 133(4)(a) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 53(3)**

134 Compensation stock.

(1) This section has effect where gilt-edged securities are exchanged for shares in pursuance of any enactment (including an enactment passed after this Act) which provides for the compulsory acquisition of any shares and the issue of gilt-edged securities instead.

(2) The exchange shall not constitute a conversion of securities within section 132 and shall be treated as not involving any disposal of the shares by the person from whom they were compulsorily acquired but—

(a) there shall be calculated the gain or loss that would have accrued to him if he had then disposed of the shares for a consideration equal to the value of the shares as determined for the purpose of the exchange, and

(b) on a subsequent disposal of the whole or part of the gilt-edged securities by the person to whom they were issued—

(i) there shall be deemed to accrue to him the whole or a corresponding part of the gain or loss mentioned in paragraph (a) above, and

(ii) section 115(1) shall not have effect in relation to any gain or loss that is deemed to accrue as aforesaid.

(3) Where a person to whom gilt-edged securities of any kind were issued as mentioned in subsection (1) above disposes of securities of that kind, the securities of which he disposes—

(a) shall, so far as possible, be identified with securities which were issued to him as mentioned in subsection (1) above rather than with other securities of that kind, and

(b) subject to paragraph (a) above, shall be identified with securities issued at an earlier time rather than those issued at a later time.

(4) Subsection (2)(b) above shall not apply to any disposal falling within the provisions of section 58(1), 62(4) or 171(1) but a person who has acquired the securities on a disposal falling within those provisions (and without there having been a previous disposal not falling within those provisions or a devolution on death) shall be treated for the purposes of subsections (2)(b) and (3) above as if the securities had been issued to him.

(5) Where the gilt-edged securities to be exchanged for any shares are not issued until after the date on which the shares are compulsorily acquired but on that date a right to the securities is granted, this section shall have effect as if the exchange had taken place on that date, as if references to the issue of the securities and the person to whom they were issued were references to the grant of the right and the person to whom it was granted and references to the disposal of the securities included references to disposals of the rights.

(6) In this section "shares" includes securities within the meaning of section 132.

(7) This section does not apply where the compulsory acquisition took place before 7th April 1976.

[F9 Company reconstructions ...

Textual Amendments

F9 Words in s. 135 cross-heading repealed (with effect in accordance with Sch. 9 paras. 7, 8, Sch. 40 Pt. 3(2) Note of the amending Act) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(2)**

[F10135 Exchange of securities for those in another company

(1) This section applies in the following circumstances where a company ("company B") issues shares or debentures to a person in exchange for shares in or debentures of another company ("company A").

(2) The circumstances are:

Case 1

Where company B holds, or in consequence of the exchange will hold, more than 25% of the ordinary share capital of company A.

Case 2

Where company B issues the shares or debentures in exchange for shares as the result of a general offer—

(a) made to members of company A or any class of them (with or without exceptions for persons connected with company B), and

(b) made in the first instance on a condition such that if it were satisfied company B would have control of company A.

Case 3

Where company B holds, or in consequence of the exchange will hold, the greater part of the voting power in company A.

(3) Where this section applies, sections 127 to 131 (share reorganisations etc) apply with the necessary adaptations as if company A and company B were the same company and the exchange were a reorganisation of its share capital.

(4) In this section "ordinary share capital" has the meaning given by section 832(1) of the Taxes Act and also includes—

(a) in relation to a unit trust scheme, any rights that are treated by section 99(1)(b) of this Act (application of Act to unit trust schemes) as shares in a company, and

(b) in relation to a company that has no share capital, any interests in the company possessed by members of the company.

(5) This section applies in relation to a company that has no share capital as if references to shares in or debentures of the company included any interests in the company possessed by members of the company.

(6) This section has effect subject to section 137(1) (exchange must be for bona fide commercial reasons and not part of tax avoidance scheme).**]**

Textual Amendments

F10 S. 135 substituted (with effect in accordance with Sch. 9 paras. 7, 8 of the amending Act) by Finance Act 2002 (c. 23), **Sch. 9 para. 1**

Modifications etc. (not altering text)

C16 Ss. 135, 136 excluded (with effect in accordance with s. 63(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 15 para. 82** (with s. 84)

C17 Ss. 135, 136 excluded by Income and Corporation Taxes Act 1988 (c. 1), s. 757 (as amended (with effect in accordance with Sch. 9 paras. 7, 8 of the amending Act) by Finance Act 2002 (c. 23), **Sch. 9 para. 4(5))**

[F11 136 Scheme of reconstruction involving issue of securities

(1) This section applies where—

(a) an arrangement between a company ("company A") and—

(i) the persons holding shares in or debentures of the company, or

(ii) where there are different classes of shares in or debentures of the company, the persons holding any class of those shares or debentures,

is entered into for the purposes of, or in connection with, a scheme of reconstruction, and

(b) under the arrangement—

(i) another company ("company B") issues shares or debentures to those persons in respect of and in proportion to (or as nearly as may be in proportion to) their relevant holdings in company A, and

(ii) the shares in or debentures of company A comprised in relevant holdings are retained by those persons or are cancelled or otherwise extinguished.

(2) Where this section applies—

(a) those persons are treated as exchanging their relevant holdings in company A for the shares or debentures held by them in consequence of the arrangement, and

(b) sections 127 to 131 (share reorganisations etc) apply with the necessary adaptations as if company A and company B were the same company and the exchange were a reorganisation of its share capital.

For this purpose shares in or debentures of company A comprised in relevant holdings that are retained are treated as if they had been cancelled and replaced by a new issue.

(3) Where a reorganisation of the share capital of company A is carried out for the purposes of the scheme of reconstruction, the provisions of subsections (1) and (2) apply in relation to the position after the reorganisation.

(4) In this section—

(a) "scheme of reconstruction" has the meaning given by Schedule 5AA to this Act;

(b) references to "relevant holdings" of shares in or debentures of company A are—

(i) where there is only one class of shares in or debentures of the company, to holdings of shares in or debentures of the company, and

(ii) where there are different classes of shares in or debentures of the company, to holdings of a class of shares or debentures that is involved in the scheme of reconstruction (within the meaning of paragraph 2 of Schedule 5AA);

(c) references to shares or debentures being retained include their being retained with altered rights or in an altered form, whether as the result of reduction, consolidation, division or otherwise; and

(d) any reference to a reorganisation of a company's share capital is to a reorganisation within the meaning of section 126.

(5) This section applies in relation to a company that has no share capital as if references to shares in or debentures of the company included any interests in the company possessed by members of the company.

(6) This section has effect subject to section 137(1) (scheme of reconstruction must be for bona fide commercial reasons and not part of tax avoidance scheme).**]**

Textual Amendments

F11 S. 136 substituted (with effect in accordance with Sch. 9 paras. 7, 8 of the amending Act) by Finance Act 2002 (c. 23), **Sch. 9 para. 2**

Modifications etc. (not altering text)

C16 Ss. 135, 136 excluded (with effect in accordance with s. 63(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 15 para. 82** (with s. 84)

C17 Ss. 135, 136 excluded by Income and Corporation Taxes Act 1988 (c. 1), s. 757 (as amended (with effect in accordance with Sch. 9 paras. 7, 8 of the amending Act) by Finance Act 2002 (c. 23), **Sch. 9 para. 4(5))**

C18 S. 136 applied (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 29 para. 84(1)**

C19 S. 136 applied by Income and Corporation Taxes Act 1988 (c. 1), s. 842 (as amended (with effect in accordance with Sch. 9 paras. 7, 8 of the amending Act) by Finance Act 2002 (c. 23), **Sch. 9 para. 4(7))**

137 Restriction on application of sections 135 and 136.

(1) Subject to subsection (2) below, and section 138, neither section 135 nor section 136 shall apply to any issue by a company of shares in or debentures of that company in exchange for or in respect of shares in or debentures of another company unless the exchange **[**[F12]or scheme of reconstruction**]** in question is effected for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to capital gains tax or corporation tax.

(2) Subsection (1) above shall not affect the operation of section 135 or 136 in any case where the person to whom the shares or debentures are issued does not hold more than 5 per cent. of, or of any class of, the shares in or debentures of the second company mentioned in subsection (1) above.

(3) For the purposes of subsection (2) above shares or debentures held by persons connected with the person there mentioned shall be treated as held by him.

(4) If any tax assessed on a person (the chargeable person) by virtue of subsection (1) above is not paid within 6 months from the date when it is payable, any other person who—

(a) holds all or any part of the shares or debentures that were issued to the chargeable person, and

(b) has acquired them without there having been, since their acquisition by the chargeable person, any disposal of them not falling within section 58(1) or 171,

may, at any time within 2 years from the time when the tax became payable, be assessed and charged (in the name of the chargeable person) to all or, as the case may be, a corresponding part of the unpaid tax; and a person paying any amount of tax under this subsection shall be entitled to recover a sum of that amount from the chargeable person.

(5) With respect to chargeable gains accruing in chargeable periods ending after such day as the Treasury may by order appoint, in subsection (4) above—

(a) for the words "the date when it is payable" there shall be substituted " the date determined under subsection (4A) below ";

(b) for the words "the time when the tax became payable" there shall be substituted " that date "; and

(c) for the words "a sum" onwards there shall be substituted " from the chargeable person a sum equal to that amount together with any interest paid by him under section 87A of the Management Act on that amount ";

and after that subsection there shall be inserted—

"(4A) The date referred to in subsection (4) above is whichever is the later of—

(a) the date when the tax becomes due and payable by the chargeable person; and

(b) the date when the assessment was made on the chargeable person."

(6) In this section references to shares or debentures include references to any interests or options to which this Chapter applies by virtue of **[**F13section 135(5), 136(5)**]** or 147.

Textual Amendments

F12 Words in s. 137(1) substituted (with effect in accordance with Sch. 9 paras. 7, 8 of the amending Act) by Finance Act 2002 (c. 23), **Sch. 9 para. 5(5)(a)**

F13 Words in s. 137(6) substituted (with effect in accordance with Sch. 9 paras. 7, 8 of the amending Act) by Finance Act 2002 (c. 23), **Sch. 9 para. 5(5)(b)**

Commencement Information

I1 S. 137(5):30.9.1993 appointed for the purposes of s. 137(5) by S.I. 1992/3066, **art. 2(2)(d)** in force at 30.9.1993 by S.I. 1992/3066, **art. 2(2)(d)**

138 Procedure for clearance in advance.

(1) Section 137 shall not affect the operation of section 135 or 136 in any case where, before the issue is made, the Board have, on the application of either company mentioned in section 137(1), notified the company that the Board are satisfied that the exchange **[**F14or scheme of reconstruction**]** will be effected for bona fide commercial reasons and will not form part of any such scheme or arrangements as are mentioned in section 137(1).

(2) Any application under subsection (1) above shall be in writing and shall contain particulars of the operations that are to be effected and the Board may, within 30 days of the receipt of the application or of any further particulars previously required under this subsection, by notice require the applicant to furnish further particulars for the

purpose of enabling the Board to make their decision; and if any such notice is not complied with within 30 days or such longer period as the Board may allow, the Board need not proceed further on the application.

(3) The Board shall notify their decision to the applicant within 30 days of receiving the application or, if they give a notice under subsection (2) above, within 30 days of the notice being complied with.

(4) If the Board notify the applicant that they are not satisfied as mentioned in subsection (1) above or do not notify their decision to the applicant within the time required by subsection (3) above, the applicant may within 30 days of the notification or of that time require the Board to transmit the application, together with any notice given and further particulars furnished under subsection (2) above, to the Special Commissioners; and in that event any notification by the Special Commissioners shall have effect for the purposes of subsection (1) above as if it were a notification by the Board.

(5) If any particulars furnished under this section do not fully and accurately disclose all facts and considerations material for the decision of the Board or the Special Commissioners, any resulting notification that the Board or Commissioners are satisfied as mentioned in subsection (1) above shall be void.

Textual Amendments

F14 Words in s. 138(1) substituted (with effect in accordance with Sch. 9 paras. 7, 8 of the amending Act) by Finance Act 2002 (c. 23), **Sch. 9 para. 5(6)**

Modifications etc. (not altering text)

C20 S. 138(2) applied (6.4.2007) by Income Tax Act 2007 (c. 3), **ss. 247(2)**, 1034(1) (with Sch. 2)

C21 S. 138(2)-(5) applied by Finance Act 1996 (c. 8), Sch. 9 para. 12F(3) (as inserted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 16** (with S.I. 2008/1579, reg. 4(1)))

C22 S. 138(2)-(5) applied by Finance Act 1996 (c. 8), Sch. 9 para. 12B(8) (as 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. 8** (with S.I. 2008/1579, reg. 4(1)))

C23 S. 138(2)-(5) applied by Finance Act 2002 (c. 23), Sch. 26 para. 30F(3) (as inserted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 19** (with S.I. 2008/1579, reg. 4(1)))

C24 S. 138(2)-(5) applied by Finance Act 2002 (c. 23), Sch. 26 para. 30B(8) (as 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. 10** (with S.I. 2008/1579, reg. 4(1)))

[F15 138A Use of earn-out rights for exchange of securities.

(1) For the purposes of this section an earn-out right is so much of any right conferred on any person ("the seller") as—

(a) constitutes the whole or any part of the consideration for the transfer by him of shares in or debentures of a company ("the old securities");

(b) consists in a right to be issued with shares in or debentures of another company ("the new company");

(c) is such that the value or quantity of the shares or debentures to be issued in pursuance of the right ("the new securities") is unascertainable at the time when the right is conferred; and

(d) is not capable of being discharged in accordance with its terms otherwise than by the issue of the new securities.

(2) Where—

(a) there is an earn-out right, **[**F16and**]**

(b) the exchange of the old securities for the earn-out right is an exchange to which section 135 would apply, in a manner unaffected by section 137, if the earn-out right were an ascertainable amount of shares in or debentures of the new company, F17...

F17(c) . . . . . .

this Act shall have effect, in the case of the seller and every other person who from time to time has the earn-out right, in accordance with the assumptions specified in subsection (3) below.

F18(2A) **[** Subsection (2) above does not have effect if the seller elects under this section for the earn-out right not to be treated as a security of the new company.**]**

(3) Those assumptions are—

(a) that the earn-out right is a security within the definition in section 132;

(b) that the security consisting in the earn-out right is a security of the new company and is incapable of being a qualifying corporate bond for the purposes of this Act;

(c) that references in this Act (including those in this section) to a debenture include references to a right that is assumed to be a security in accordance with paragraph (a) above; and

(d) that the issue of shares or debentures in pursuance of such a right constitutes the conversion of the right, in so far as it is discharged by the issue, into the shares or debentures that are issued.

(4) For the purposes of this section where—

(a) any right which is assumed, in accordance with this section, to be a security of a company ("the old right") is extinguished,

(b) the whole of the consideration for the extinguishment of the old right consists in another right ("the new right") to be issued with shares in or debentures of that company,

(c) the new right is such that the value or quantity of the shares or debentures to be issued in pursuance of the right ("the replacement securities") is unascertainable at the time when the old right is extinguished, **[**F19and**]**

(d) the new right is not capable of being discharged in accordance with its terms otherwise than by the issue of the replacement securities, F20...

F20(e) . . . . . .

the assumptions specified in subsection (3) above shall have effect in relation to the new right, in the case of **[**F21the person on whom the new right is conferred**]** and every other person who from time to time has the new right, as they had effect in relation to the old right.

[Subsection (4) above does not have effect if the person on whom the new right is [F22](4A) conferred elects under this section for it not to be treated as a security of the new company.**]**

(5) An election under this section in respect of any right must be made, by a notice given to an officer of the Board—

(a) in the case of an election by a company within the charge to corporation tax, within the period of two years from the end of the accounting period in which the right is conferred; and

(b) in any other case, on or before the first anniversary of the 31st January next following the year of assessment in which that right is conferred.

(6) An election under this section shall be irrevocable.

(7) Subject to subsections (8) to (10) below, where any right to be issued with shares in or debentures of a company is conferred on any person, the value or quantity of the shares or debentures to be issued in pursuance of that right shall be taken for the purposes of this section to be unascertainable at a particular time if, and only if—

(a) it is made referable to matters relating to any business or assets of one or more relevant companies; and

(b) those matters are uncertain at that time on account of future business or future assets being included in the business or assets to which they relate.

(8) Where a right to be issued with shares or debentures is conferred wholly or partly in consideration for the transfer of other shares or debentures or the extinguishment of any right, the value and quantity of the shares or debentures to be issued shall not be taken for the purposes of this section to be unascertainable in any case where, if—

(a) the transfer or extinguishment were a disposal, and

(b) a gain on that disposal fell to be computed in accordance with this Act,

the shares or debentures to be issued would, in pursuance of section 48, be themselves regarded as, or as included in, the consideration for the disposal.

(9) Where any right to be issued with shares in or debentures of a company comprises an option to choose between shares in that company and debentures of that company, the existence of that option shall not, by itself, be taken for the purposes of this section either—

(a) to make unascertainable the value or quantity of the shares or debentures to be issued; or

(b) to prevent the requirements of subsection (1)(b) and (d) or (4)(b) and (d) above from being satisfied in relation to that right.

(10) For the purposes of this section the value or quantity of shares or debentures shall not be taken to be unascertainable by reason only that it has not been fixed if it will be fixed by reference to the other and the other is ascertainable.

(11) In subsection (7) above "relevant company", in relation to any right to be issued with shares in or debentures of a company, means—

(a) that company or any company which is in the same group of companies as that company; or

(b) the company for whose shares or debentures that right was or was part of the consideration, or any company in the same group of companies as that company;

and in this subsection the reference to a group of companies shall be construed in accordance with section 170(2) to (14).**]**

Textual Amendments

F15 S. 138A inserted (retrospectively) by Finance Act 1997 (c. 16), **s. 89(1)(2)** (with s. 89(3)-(8))

F16 Word in s. 138A(2)(a) inserted (with effect in accordance with s. 161(6) of the amending Act) by Finance Act 2003 (c. 14), **s. 161(2)(a)**

F17 S. 138A(2)(c) and preceding word repealed (with effect in accordance with s. 161(6) of the amending Act) by Finance Act 2003 (c. 14), s. 161(2)(b), **Sch. 43 Pt. 3(8)**

F18 S. 138A(2A) inserted (with effect in accordance with s. 161(6) of the amending Act) by Finance Act 2003 (c. 14), **s. 161(3)**

F19 Word in s. 138A(4)(c) inserted (with effect in accordance with s. 161(6) of the amending Act) by Finance Act 2003 (c. 14), **s. 161(4)(a)**

F20 S. 138A(4)(e) and preceding word repealed (with effect in accordance with s. 161(6) of the amending Act) by Finance Act 2003 (c. 14), s. 161(4)(b), **Sch. 43 Pt. 3(8)**

F21 Words in s. 138A(4) substituted (with effect in accordance with s. 161(6) of the amending Act) by Finance Act 2003 (c. 14), **s. 161(4)(c)**

F22 S. 138A(4A) inserted (with effect in accordance with s. 161(6) of the amending Act) by Finance Act 2003 (c. 14), **s. 161(5)**

139 Reconstruction [F23]... involving transfer of business.

(1) Subject to the provisions of this section, where—

(a) any scheme of reconstruction [F24]... involves the transfer of the whole or part of a company's business to another company, and

[[F25](b) the conditions in subsection (1A) below are met in relation to the assets included in the transfer, and**]**

(c) the first-mentioned company receives no part of the consideration for the transfer (otherwise than by the other company taking over the whole or part of the liabilities of the business),

then, so far as relates to corporation tax on chargeable gains, the 2 companies shall be treated as if any assets included in the transfer were acquired by the one company from the other company for a consideration of such amount as would secure that on the disposal by way of transfer neither a gain nor a loss would accrue to the company making the disposal, and for the purposes of Schedule 2 the acquiring company shall be treated as if the respective acquisitions of the assets by the other company had been the acquiring company's acquisition of them.

[[F26](1A) The conditions referred to in subsection (1)(b) above are—

(a) that the company acquiring the assets is resident in the United Kingdom at the time of the acquisition, or the assets are chargeable assets in relation to that company immediately after that time, and

(b) that the company from which the assets are acquired is resident in the United Kingdom at the time of the acquisition, or the assets are chargeable assets in relation to that company immediately before that time.

For this purpose an asset is a "chargeable asset" in relation to a company at any time if, were the asset to be disposed of by the company at that time, any gain accruing to the company would be a chargeable gain and would by virtue of section **[**[F27]10B**]** form part of its chargeable profits for corporation tax purposes.**]**

(2) This section does not apply in relation to an asset which, until the transfer, formed part of trading stock of a trade carried on by the company making the disposal, or in relation to an asset which is acquired as trading stock for the purposes of a trade carried on by the company acquiring the asset.

Section 170(1) applies for the purposes of this subsection.

F28(3) . . . . . .

(4) This section does not apply in the case of a transfer of the whole or part of a company's business to a unit trust scheme to which section 100(2) applies or which is an authorised unit trust or to an investment trust **[**F29or a venture capital trust**]**.

(5) This section does not apply unless the reconstruction F30... is effected for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to corporation tax, capital gains tax or income tax; but the foregoing provisions of this subsection shall not affect the operation of this section in any case where, before the transfer, the Board have, on the application of the acquiring company, notified the company that the Board are satisfied that the reconstruction F30... will be effected for bona fide commercial reasons and will not form part of any such scheme or arrangements as aforesaid.

Subsections (2) to (5) of section 138 shall have effect in relation to this subsection as they have effect in relation to subsection (1) of that section.

(6) Where, if the company making the disposal had not been wound up, tax could have been assessed on it by virtue of subsection (5) above, that tax may be assessed and charged (in the name of the company making the disposal) on the company to which the disposal is made.

(7) If any tax assessed on a company ("the chargeable company") by virtue of subsection (5) or (6) above is not paid within 6 months from the date when it is payable, any other person who—

(a) holds all or any part of the assets in respect of which the tax is charged; and

(b) either is the company to which the disposal was made or has acquired the assets without there having been any subsequent disposal not falling within this section or section 171,

may, within 2 years from the time when the tax became payable, be assessed and charged (in the name of the chargeable company) to all or, as the case may be, a corresponding part of the unpaid tax; and a person paying any amount of tax under this section shall be entitled to recover a sum of that amount from the chargeable company.

(8) With respect to chargeable gains accruing in chargeable periods ending after such day as the Treasury may by order appoint, in subsection (7) above—

(a) for the words "when it is payable" there shall be substituted " when it is due and payable or, if later, the date when the assessment is made on the company ";

(b) for the words "the time when the tax became payable" there shall be substituted " the later of those dates "; and

(c) for the words "a sum" onwards there shall be substituted " from the chargeable company a sum equal to that amount together with any interest paid by him under section 87A of the Management Act on that amount ".

[F31(9) In this section "scheme of reconstruction" has the same meaning as in section 136.**]**

Textual Amendments

F23 Words in s. 139 heading repealed (with effect in accordance with Sch. 9 paras. 7, 8, Sch. 40 Pt. 3(2) Note of the amending Act) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(2)**

F24 Words in s. 139(1)(a) repealed (with effect in accordance with Sch. 9 paras. 7, 8, Sch. 40 Pt. 3(2) Note of the amending Act) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(2)**

F25 S. 139(1)(b) substituted (with effect in accordance with Sch. 29 para. 5(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 29 para. 5(2)** (with Sch. 29 para. 46(5))

F26 S. 139(1A) inserted (with effect in accordance with Sch. 29 para. 5(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 29 para. 5(3)** (with Sch. 29 para. 46(5))

F27 Word in s. 139(1A) substituted (with effect in accordance with s. 155(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 27 para. 2(3)**

F28 S. 139(3) repealed (with effect in accordance with s. 251(1)(a)(5) of the amending Act) by Finance Act 1994 (c. 9), s. 251(5), **Sch. 26 Pt. VIII(1)**

F29 Words in s. 139(4) inserted (with application in accordance with s. 134(4) of the amending Act) by Finance Act 1998 (c. 36), **s. 134(1)**

F30 Words in s. 139(5) repealed (with effect in accordance with Sch. 9 paras. 7, 8, Sch. 40 Pt. 3(2) Note of the amending Act) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(2)**

F31 S. 139(9) substituted (with effect in accordance with Sch. 9 paras. 7, 8 of the amending Act) by Finance Act 2002 (c. 23), **Sch. 9 para. 5(7)**

Modifications etc. (not altering text)

C25 S. 139 excluded (27.7.1993 with application as mentioned in s. 165(1)) by 1993 c. 34, s. 169, **Sch. 17 para. 7(2)(b)**

C26 S. 139 restricted (with effect in accordance with s. 131(4) of the amending Act) by Finance Act 1995 (c. 4), **s. 131(1)**(2)(a)

Commencement Information

I2 S. 139(8): 30.9.1993 appointed for the purposes of s. 139(8) by S.I. 1992/3066, **art. 2(2)(d)**

140 Postponement of charge on transfer of assets to non-resident company.

(1) This section applies where a company resident in the United Kingdom carries on a trade outside the United Kingdom through a **[**F32permanent establishment**]** and—

(a) that trade, or part of it, together with the whole assets of the company used for the purposes of the trade or part (or together with the whole of those assets other than cash) is transferred to a company not resident in the United Kingdom;

(b) the trade or part is so transferred wholly or partly in exchange for securities consisting of shares, or of shares and loan stock, issued by the transferee company to the transferor company;

(c) the shares so issued, either alone or taken together with any other shares in the transferee company already held by the transferor company, amount in all to not less than one quarter of the ordinary share capital of the transferee company; and

(d) either no allowable losses accrue to the transferor company on the transfer or the aggregate of the chargeable gains so accruing exceeds the aggregate of the allowable losses so accruing;

and also applies in any case where section 268A of the [M1]Income and Corporation Taxes Act 1970 applied unless the deferred gain had been wholly taken into account in accordance with that section before the coming into force of this section.

Section 170(1) shall apply for the purposes of this section.

(2) In any case to which this section applies the transferor company may claim that this Act shall have effect in accordance with the following provisions.

(3) Any allowable losses accruing to the transferor company on the transfer shall be set off against the chargeable gains so accruing and 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 and—

(a) if the securities are the whole consideration for the transfer, the whole of that gain shall be treated as not accruing to the transferor company on the transfer but an equivalent amount ("the deferred gain") shall be brought into account in accordance with subsections (4) and (5) below;

(b) if the securities are not the whole of that consideration—

(i) paragraph (a) above shall apply to the appropriate proportion of that gain; and

(ii) the remainder shall be treated as accruing to the transferor company on the transfer.

In paragraph (b)(i) above "the appropriate proportion" means the proportion that the market value of the securities at the time of the transfer bears to the market value of the whole of the consideration at that time.

(4) If at any time after the transfer the transferor company disposes of the whole or part of the securities held by it immediately before that time, the consideration received by it on the disposal shall be treated as increased by the whole or the appropriate proportion of the deferred gain so far as not already taken into account under this subsection or subsection (5) below.

In this subsection "the appropriate proportion" means the proportion that the market value of the part of the securities disposed of bears to the market value of the securities held immediately before the disposal.

(5) If at any time within 6 years after the transfer the transferee company disposes of the whole or part of the relevant assets held by it immediately before that time there shall be deemed to accrue to the transferor company as a chargeable gain on that occasion the whole or the appropriate proportion of the deferred gain so far as not already taken into account under this subsection or subsection (4) above.

In this subsection "relevant assets" means assets the chargeable gains on which were taken into account in arriving at the deferred gain and "the appropriate proportion" means the proportion which the chargeable gain so taken into account in respect of the part of the relevant assets disposed of bears to the aggregate of the chargeable gains so taken into account in respect of the relevant assets held immediately before the time of the disposal.

(6) There shall be disregarded—

(a) for the purposes of subsection (4) above any disposal to which section 171 applies; and

(b) for the purposes of subsection (5) above any disposal to which that section would apply **[**F33if subsections (1)(b) and (1A) of that section and section 170(9) were disregarded**]**;

and where a person acquires securities or an asset on a disposal disregarded for the purposes of subsection (4) or (5) above (and without there having been a previous disposal not so disregarded) a disposal of the securities or asset by that person shall be treated as a disposal by the transferor or, as the case may be, transferee company.

[F34(6A) No claim may be made under this section as regards a transfer in relation to which a claim is made under section 140C.**]**

[F35(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.**]**

[F36(6B) If securities are transferred by a transferor as part of the process of a merger to which section 140E applies—

(a) the transfer shall be disregarded for the purposes of subsection (4), and

(b) the transferee shall be treated as if it were the transferor 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.

(6C) In subsection (6B) "transferor" and "transferee" have the meaning given by section 140E(9).**]**

(7) If in the case of any such transfer as was mentioned in section 268(1) of the M2Income and Corporation Taxes Act 1970 there were immediately before the coming into force of this section chargeable gains which by virtue of section 268(2) and 268A(8) of that Act were treated as not having accrued to the transferor company, subsection (4) above shall (without any claim in that behalf) apply to the aggregate of those gains as if references to the deferred gain were references to that aggregate and as if references to the transfer and the securities were references to the transfer and the shares, or shares and loan stock, mentioned in section 268(1).

(8) If in the case of any such transfer as was mentioned in section 268A(1) of the M3Income and Corporation Taxes Act 1970 there were immediately before the coming into force of this section deferred gains which by virtue of section 268A(3) were treated as not having accrued to the transferor company, subsections (4) and (5) above shall (without any claim in that behalf) apply to those deferred gains as they apply to gains deferred by virtue of subsection (3) above (as if the references to the transfer and the securities were references to the transfer and securities mentioned in section 268A(1)).

Textual Amendments

F32 Words in s. 140(1) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 153(1)(b)**

F33 Words in s. 140(6)(b) substituted (with effect in accordance with Sch. 29 para. 23(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 29 para. 23(1)** (with Sch. 29 para. 46(5))
F34 S. 140(6A) inserted (*retrosp.*) by 1992 c. 48, **s. 46(1)(4)**
F35 S. 140(6AA) inserted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 7** (with S.I. 2008/1579, **reg. 4(1)**)
F36 S. 140(6B)(6C) substituted for s. 140(6B) (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. 5** (with S.I. 2008/1579, reg. 4(1))

Marginal Citations
M1 1970 c. 10.
M2 1970 c. 10.
M3 1970 c. 10.

F37 *[Transfers concerning companies of different member States]*

Textual Amendments
F37 Cross heading inserted (*retrosp.*) by 1992 c. 48, **s.44**

[F38 140A [F39 Transfer or division of UK business]

(1) This section applies where—
(a) a [F40 company] resident in one member State ([F41 the transferor]) transfers the whole or part of a [F42 business] carried on by it in the United Kingdom to a [F40 company] resident in another member State ([F43 the transferee]),
(b) the transfer is wholly in exchange for [F44 shares or debentures] issued by [F43 the transferee] to [F41 the transferor],
(c) a claim is made under this section by [F41 the transferor] and [F43 the transferee],
(d) section 140B does not prevent this section applying, and
(e) the appropriate condition is met in relation to [F43 the transferee] immediately after the time of the transfer.

F45 [(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 (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.**]**

(2) Where immediately after the time of the transfer **[**F46the transferee (or each of the transferees)**]** is not resident in the United Kingdom, the appropriate condition is that were it to dispose of the assets included in the transfer any chargeable gains accruing to it on the disposal would form part of its chargeable profits for corporation tax purposes by virtue of section **[**F47 10B**]**.

(3) Where immediately after the time of the transfer **[**F46the transferee (or each of the transferees)**]** is resident in the United Kingdom, the appropriate condition is that none of the assets included in the transfer is one in respect of which, by virtue of the asset being of a description specified in double taxation relief arrangements, the company falls to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to it on a disposal.

(4) Where this section applies—

(a) **[**F48the transferor and the transferee (or each of the transferees)**]** shall be treated, so far as relates to corporation tax on chargeable gains, as if any assets included in the transfer were acquired by **[**F46the transferee (or each of the transferees)**]** from **[**F49the transferor**]** for a consideration of such amount as would secure that on the disposal by way of transfer neither a gain nor a loss would accrue to **[**F49the transferor**]**;

(b) section 25(3) shall not apply to any such assets by reason of the transfer (if it would apply apart from this paragraph).

F50(5) . . . . . .

F51(6) . . . . . .

F52(7) . . . . . **]**

Textual Amendments

F38 S. 140A inserted (*retrosp.*) by 1992 c. 48, **s.44**

F39 S. 140A heading substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 2(7)** (with S.I. 2008/1579, reg. 4(1))

F40 Word in s. 140A(1) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 2(2)(c)** (with S.I. 2008/1579, reg. 4(1))

F41 Words in s. 140A(1) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 2(2)(a)** (with S.I. 2008/1579, reg. 4(1))

F42 Word in s. 140A(1) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 2(2)(d)** (with S.I. 2008/1579, reg. 4(1))

F43 Words in s. 140A(1) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 2(2)(b)** (with S.I. 2008/1579, reg. 4(1))

F44 Words in s. 140A(1)(b) substituted (with effect in accordance with s. 59(7) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **s. 59(3)(a)**

F45 S. 140A(1A)-(1D) inserted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 2(3)** (with S.I. 2008/1579, reg. 4(1))

F46 Words in s. 140A(2)-(4) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 2(4)(b)** (with S.I. 2008/1579, reg. 4(1))

F47 Word in s. 140A(2) substituted (with effect in accordance with s. 155(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 27 para. 2(3)**

F48 Words in s. 140A(4)(a) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 2(5)** (with S.I. 2008/1579, reg. 4(1))

F49 Words in s. 140A(4)(a) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 2(4)(a)** (with S.I. 2008/1579, reg. 4(1))

F50 S. 140A(5) omitted (with effect in accordance with reg. 3(1) of the amending S.I.) by virtue of The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 2(6)** (with S.I. 2008/1579, reg. 4(1))

F51 S. 140A(6) omitted (with effect in accordance with reg. 3(1) of the amending S.I.) by virtue of The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 2(6)** (with S.I. 2008/1579, reg. 4(1))

F52 S. 140A(7) omitted (with effect in accordance with reg. 3(1) of the amending S.I.) by virtue of The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 2(6)** (with S.I. 2008/1579, reg. 4(1))

Modifications etc. (not altering text)

C27 S. 140A restricted (with effect in accordance with s. 131(4) of the amending Act) by Finance Act 1995 (c. 4), **s. 131(1)**(2)(a)

C28 S. 140A(1C) 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(a)** (with reg. 6(2))

[F53 140B Section 140A: anti-avoidance.

(1) Section 140A shall not apply unless the transfer of the **[**F54 business**]** or part is effected for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to income tax, corporation tax or capital gains tax.

(2) Subsection (1) above shall not apply where, before the transfer, the Board have on the application of **[**F55 the transferor**]** and **[**F56 the transferee (or each of the transferees)**]** notified those companies that the Board are satisfied that the transfer will be effected for bona fide commercial reasons and will not form part of any such scheme or arrangements as are mentioned in that subsection.

(3) Subsections (2) to (5) of section 138 shall have effect in relation to subsection (2) above as they have effect in relation to subsection (1) of that section.**]**

Textual Amendments

F53 S. 140B inserted (*retrosp.*) by 1992 c. 48, **s.44**

F54 Word in s. 140B(1) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 3(c)** (with S.I. 2008/1579, reg. 4(1))

F55 Words in s. 140B(2) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 3(a)** (with S.I. 2008/1579, reg. 4(1))

F56 Words in s. 140B(2) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 3(b)** (with S.I. 2008/1579, reg. 4(1))

[F57140C[F58Transfer or division of non-UK business]

(1) This section applies where—

(a) a [F59company] resident in the United Kingdom ([F60the transferor]) transfers to a [F59company] resident in another member State ([F61the transferee]) the whole or part of a [F62business] which, immediately before the time of the transfer, [F60the transferor] carried on in a member State other than the United Kingdom through a [F63permanent establishment],

(b) the transfer includes the whole of the assets of [F60the transferor] used for the purposes of the [F62business] or part (or the whole of those assets other than cash),

(c) the transfer is wholly or partly in exchange for [F64shares or debentures] issued by [F61the transferee] to [F60the transferor],

(d) the aggregate of the chargeable gains accruing to [F60the transferor] on the transfer exceeds the aggregate of the allowable losses so accruing,

(e) a claim is made under this section by [F60the transferor], and

(f) section 140D does not prevent this section applying.

F65[This section also applies where a company resident in the United Kingdom transfers (1A) 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.**]**

(2) In a case where this section applies, this Act shall have effect in accordance with subsection (3) below.

(3) The allowable losses accruing to **[**F66the transferor**]** on the transfer shall be set off against the chargeable gains so accruing and 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) No claim may be made under this section as regards a transfer in relation to which a claim is made under section 140.

(5) In a case where this section applies, section 815A of the Taxes Act shall also apply.

F67(6) . . . . . .

F68(7) . . . . . .

(8) Section 442(3) of the Taxes Act (overseas business of UK insurance companies) shall be ignored in arriving at the chargeable gains accruing to **[**F69the transferor**]** on the transfer, and the allowable losses so accruing, for the purposes of subsections (1)(d) and (3) above.

F70(9) . . . . . **]**

Textual Amendments

F57 S. 140C inserted (*retrosp.*) by 1992 c. 48, **s. 45**

F58 S. 140C heading substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 4(6)** (with S.I. 2008/1579, reg. 4(1))

F59 Word in s. 140C(1) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 4(2)(c)** (with S.I. 2008/1579, reg. 4(1))

F60 Words in s. 140C(1) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 4(2)(a)** (with S.I. 2008/1579, reg. 4(1))

F61 Words in s. 140C(1) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 4(2)(b)** (with S.I. 2008/1579, reg. 4(1))

F62 Word in s. 140C(1) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 4(2)(d)** (with S.I. 2008/1579, reg. 4(1))

F63 Words in s. 140C(1)(a) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 153(1)(b)**

F64 Words in s. 140C(1)(c) substituted (with effect in accordance with s. 59(7) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **s. 59(4)(a)**

F65 S. 140C(1A)-(1C) inserted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 4(3)** (with S.I. 2008/1579, reg. 4(1))

F66 Words in s. 140C(3) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 4(4)** (with S.I. 2008/1579, reg. 4(1))

F67 S. 140C(6) omitted (with effect in accordance with reg. 3(1) of the amending S.I.) by virtue of The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 4(5)** (with S.I. 2008/1579, reg. 4(1))

F68 S. 140C(7) omitted (with effect in accordance with reg. 3(1) of the amending S.I.) by virtue of The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 4(5)** (with S.I. 2008/1579, reg. 4(1))

F69 Words in s. 140C(8) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 4(4)** (with S.I. 2008/1579, reg. 4(1))

F70 S. 140C(9) omitted (with effect in accordance with reg. 3(1) of the amending S.I.) by virtue of The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 4(5)** (with S.I. 2008/1579, reg. 4(1))

Modifications etc. (not altering text)

C29 S. 140C(1C) 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(b)** (with reg. 6(2))

[F71 140D Section 140C: anti-avoidance.

(1) Section 140C shall not apply unless the transfer of the **[**F72 business**]** or part is effected for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to income tax, corporation tax or capital gains tax.

(2) Subsection (1) above shall not apply where, before the transfer, the Board have on the application of **[**F73 the transferor**]** notified that company that the Board are satisfied that the transfer will be effected for bona fide commercial reasons and will not form part of any such scheme or arrangements as are mentioned in that subsection.

(3) Subsections (2) to (5) of section 138 shall have effect in relation to subsection (2) above as they have effect in relation to subsection (1) of that section.**]**

Textual Amendments

F71 S. 140D inserted (*retrosp.*) by 1992 c. 48, **s. 45**

F72 Word in s. 140D(1) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 5(b)** (with S.I. 2008/1579, reg. 4(1))

F73 Words in s. 140D(2) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 5(a)** (with S.I. 2008/1579, reg. 4(1))

[F74 140DA Securities issued on division of business

(1) This section applies where—

(a) a transfer of assets to which section 140A(1A) or 140C(1A) 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.**]**

Textual Amendments

F74 S. 140DA inserted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 6** (with S.I. 2008/1579, reg. 4(1))

[F75 Mergers within European Community

Textual Amendments

F75 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

(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,

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)

C30 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,

(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, [F76]...

(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 **[**F77and

(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

F76 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)**

F77 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)

C31 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—

(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.**]**

[F78 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

F78 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**

[F79 Transparent entities: disapplication of reliefs related to Mergers Directive

Textual Amendments

F79 Ss. 140H-140L and cross-heading inserted (with effect in accordance with reg. 3(3) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 3 para. 1** (with S.I. 2008/1579, **reg. 4(2)**)

140H. Share exchanges

(1) This section applies if—

(a) a company ("company B") issues shares or debentures to a person in exchange for shares in or debentures of another company ("company A"),
(b) the exchange falls within one of the cases specified in section 135(2), and
(c) either company B or company A or both is a transparent entity.

(2) Where this section applies—
(a) "company" in section 135 shall be treated as meaning an entity listed in the Annex to the Mergers Directive, and
(b) section 135(3) does not apply.

(3) If, as a result of an exchange in relation to which this section applies, a gain accruing to a person holding shares in or debentures of company A on the exchange would, but for the Mergers Directive, have been chargeable to tax under the law of a member State other than the United Kingdom, Part 18 of the Taxes Act (double taxation relief), including any arrangements having effect by virtue of section 788 of that Act (bilateral relief), shall apply as if that tax, calculated in accordance with subsection (4), had been chargeable.

(4) Tax is calculated in accordance with this subsection if—
(a) so far as permitted under the law of the relevant member State, losses arising on the exchange are set against gains arising on the exchange, and
(b) any relief available to company A under that law has been claimed.

140I. Division of business or transfer of assets

(1) This section applies in relation to a transfer of a business, or part of a business, where—
(a) the transfer is of a kind **[**F80mentioned in section 140A(1) or (1A) (or which would be of such a kind**]** if the business, or the part of the business, transferred were carried on by the transferor in the United Kingdom and the condition mentioned in section 140A(1)(e) were satisfied in relation to the transferee, or each of the transferees), and
(b) either the transferor or the transferee, or one of the transferees, is a transparent entity.

(2) Where this section applies—
(a) if the transferor is a transparent entity, sections 140A and 140DA do not apply in relation to the transfer;
(b) if a transferee is a transparent entity, section 140DA does not apply in relation to the transfer to it.

(3) If, as a result of a transfer in relation to which this section applies, a transfer gain would, but for the Mergers Directive, have been chargeable to tax under the law of a member State other than the United Kingdom, Part 18 of the Taxes Act (double taxation relief), including any arrangements having effect by virtue of section 788 of that Act (bilateral relief), shall apply as if that tax, calculated in accordance with subsection (5), had been chargeable.

(4) In subsection (3) "transfer gain" means a gain accruing to a transparent entity (or which would be treated as accruing to that entity were it not transparent) by reason of the transfer of assets by the transparent entity to the transferee.

(5) Tax is calculated in accordance with this subsection if—

(a) so far as permitted under the law of the relevant member State, losses arising on the transfer are set against gains arising on the transfer, and

(b) any relief available under that law has been claimed.

Textual Amendments

F80 Words in s. 140I(1)(a) substituted (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. 5**

140J. Mergers

(1) This section applies in relation to a merger if—

(a) the merger is of a kind **[**[F81]mentioned in section 140E(1)**]**,

(b) the conditions in section 140E(2) are satisfied in relation to the merger, and

(c) one or more of the merging companies is a transparent entity.

(2) Where this section applies—

(a) if the assets and liabilities of a transparent entity are transferred to another company by reason of the merger, sections 140E and 140G shall not apply;

(b) if the assets and liabilities of one or more other companies are transferred to a transparent entity by reason of the merger section 140G shall not apply.

(3) If, as a result of a merger in relation to which this section applies, a merger gain would, but for the Mergers Directive, have been chargeable to tax under the law of a member State other than the United Kingdom, Part 18 of the Taxes Act (double taxation relief), including any arrangements having effect by virtue of section 788 of that Act (bilateral relief) shall apply as if that tax, calculated in accordance with subsection (5), had been chargeable.

(4) In subsection (3) "merger gain" means a gain accruing to a transparent entity (or which would be treated as accruing to that entity were it not transparent) by reason of the transfer of assets by the transparent entity to another company on the merger.

(5) Tax is calculated in accordance with this subsection if—

(a) so far as permitted under the law of the relevant member State, losses arising on the merger are set against gains arising on the merger, and

(b) any relief available under that law has been claimed.

Textual Amendments

F81 Words in s. 140J(1)(a) substituted (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. 6**

140K. Transparent entities: taxation after merger, &c

(1) This section applies if—

(a) a transparent entity ("company A") is a transferee for the purposes of section 140A(1A) or 140E,

(b) a person ("X") with an interest in company A was or is also a shareholder or debenture holder of a company ("company B"),

(c) X became entitled to an interest, or an increased interest, in company A in exchange for a disposal of shares in, or debentures of, company B on a merger to which section 140E applied or on a transfer to which section 140A(1A) applied,

(d) a chargeable gain accrued to X on the disposal of shares in or debentures of company B,

(e) in calculating the gain on the shares or debentures account was taken of the value of an asset of company B, and

(f) X makes a disposal of his interest in the asset.

(2) In computing the gain accruing to X on a disposal to which subsection (1)(f) applies, the sum allowable as a deduction in accordance with section 38(1)(a) in relation to the interest, or the proportion of the interest, which X acquired on the merger or transfer shall be the value taken into account in computing the gain on the disposal of his shares in, or debentures of, company B.

(3) In this section a reference to an interest in company A includes—

(a) an interest in the assets of company A,

(b) shares in company A, and

(c) debentures of company A.

140L. Interpretation

(1) In sections 140A to 140K **[**[F82]and this section**]**, unless the contrary intention appears—

(a) "the Mergers Directive" means Council Directive 90/434/EEC of 23rd July 1990 on mergers, transfers &c.,

(b) "company" means an entity listed as a company in the Annex to the Mergers Directive, and

(c) "transparent entity" means an entity which is resident in a member State other than the United Kingdom and is listed as a company in the Annex to the Mergers Directive, but—

(i) does not have an ordinary share capital (within the meaning given by section 832 of the Taxes Act), and

(ii) if it were resident in the United Kingdom, would not be capable of being a company within the meaning given by the Companies Act 2006.

(2) For the purposes of those sections and subsection (1) above, a company is resident in a member State if—

(a) it is within a charge to tax under the law of the State as being resident for that purpose, and

(b) it is not regarded, for the purpose of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.**]**

Textual Amendments

F82 Words in s. 140L(1) 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. 7**

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

Changes to legislation:
Taxation of Chargeable Gains Act 1992, Chapter II is up to date with all changes known to be in force on or before 13 June 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.