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# 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.

*<sup>F1</sup>[Transfers concerning companies of different member States]*

#### Textual Amendments

**F1** Cross heading inserted (*retrosp.*) by 1992 c. 48, s.44

#### <sup>F2</sup>140A <sup>F3</sup>Transfer or division of UK business

(1) This section applies where—

- (a) a <sup>F4</sup>company resident in one member State (<sup>F5</sup>the transferor) transfers the whole or part of a <sup>F6</sup>business carried on by it in the United Kingdom to a <sup>F4</sup>company resident in another member State (<sup>F7</sup>the transferee),
- (b) the transfer is wholly in exchange for <sup>F8</sup>shares or debentures issued by <sup>F7</sup>the transferee to <sup>F5</sup>the transferor,
- (c) a claim is made under this section by <sup>F5</sup>the transferor and <sup>F7</sup>the transferee,
- (d) section 140B does not prevent this section applying, and
- (e) the appropriate condition is met in relation to <sup>F7</sup>the transferee immediately after the time of the transfer.

[ This section also applies where a company transfers part of its business to one or more <sup>F9</sup>(1A) companies if—

- (a) the transferor is resident in one member State,

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- (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 [<sup>F10</sup>the 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 [<sup>F11</sup>10B].
- (3) Where immediately after the time of the transfer [<sup>F10</sup>the 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) [<sup>F12</sup>the 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 [<sup>F10</sup>the transferee (or each of the transferees)] from [<sup>F13</sup>the 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 [<sup>F13</sup>the 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).

<sup>F14</sup>(5) .....

<sup>F15</sup>(6) .....

<sup>F16</sup>(7) ..... ]

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### Textual Amendments

- F2** S. 140A inserted (*retrosp.*) by 1992 c. 48, s.44
- F3** 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))
- F4** 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))
- F5** 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))
- F6** 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))
- F7** 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))
- F8** 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)
- F9** 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))
- F10** 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))
- F11** 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)**
- F12** 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))
- F13** 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))
- F14** 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))
- F15** 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))
- F16** 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)

- C1** 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)
- C2** 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))

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### **[<sup>F17</sup>140B Section 140A: anti-avoidance.**

- (1) Section 140A shall not apply unless the transfer of the [<sup>F18</sup>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 [<sup>F19</sup>the transferor] and [<sup>F20</sup>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**

- F17** S. 140B inserted (*retrosp.*) by 1992 c. 48, s.44
- F18** 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))
- F19** 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))
- F20** 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))

### **[<sup>F21</sup>140C [<sup>F22</sup>Transfer or division of non-UK business]**

- (1) This section applies where—
  - (a) a [<sup>F23</sup>company] resident in the United Kingdom ([<sup>F24</sup>the transferor]) transfers to a [<sup>F23</sup>company] resident in another member State ([<sup>F25</sup>the transferee]) the whole or part of a [<sup>F26</sup>business] which, immediately before the time of the transfer, [<sup>F24</sup>the transferor] carried on in a member State other than the United Kingdom through a [<sup>F27</sup>permanent establishment],
  - (b) the transfer includes the whole of the assets of [<sup>F24</sup>the transferor] used for the purposes of the [<sup>F26</sup>business] or part (or the whole of those assets other than cash),
  - (c) the transfer is wholly or partly in exchange for [<sup>F28</sup>shares or debentures] issued by [<sup>F25</sup>the transferee] to [<sup>F24</sup>the transferor],
  - (d) the aggregate of the chargeable gains accruing to [<sup>F24</sup>the transferor] on the transfer exceeds the aggregate of the allowable losses so accruing,
  - (e) a claim is made under this section by [<sup>F24</sup>the transferor], and
  - (f) section 140D does not prevent this section applying.

[ This section also applies where a company resident in the United Kingdom transfers <sup>F29</sup>(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,

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- (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 [<sup>F30</sup>the 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, [<sup>F31</sup>section 122 of TIOPA 2010 (tax treated as chargeable in respect of gains on transfer of non-UK business)] shall also apply.
- <sup>F32</sup>(6) .....
- <sup>F33</sup>(7) .....
- <sup>F34</sup>(8) .....
- <sup>F35</sup>(9) ..... ]

#### Textual Amendments

- F21** S. 140C inserted (*retrosp.*) by 1992 c. 48, s. 45
- F22** 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))
- F23** 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))
- F24** 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))
- F25** 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))

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- F26** 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))
- F27** 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)**
- F28** 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)**
- F29** 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))
- F30** 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))
- F31** Words in s. 140C(5) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Tax Law Rewrite Acts \(Amendment\) Order 2013 \(S.I. 2013/463\)](#), arts. 1(2), **5**
- F32** 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))
- F33** 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))
- F34** S. 140C(8) omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), **Sch. 16 para. 75**
- F35** 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)

- C3** 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))

#### [<sup>F36</sup>140D] **Section 140C: anti-avoidance.**

- (1) Section 140C shall not apply unless the transfer of the [<sup>F37</sup>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 [<sup>F38</sup>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

- F36** S. 140D inserted (*retrosp.*) by [1992 c. 48](#), **s. 45**
- F37** 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))

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**F38** 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))

### [<sup>F39</sup> 140D 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

**F39** 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))

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