Finance (No. 2) Act 1992

1992 CHAPTER 48

PART II

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER I

GENERAL

Transfers of trade

44 Transfer of a UK trade: amendment of 1992 Act

The Taxation of Chargeable Gains Act 1992 shall have effect, and be deemed always to have had effect, with the insertion of the following after section 140—

"Transfers concerning companies of different member States

140A Transfer of a UK trade

(1) This section applies where—

(a) a qualifying company resident in one member State (company A)

transfers the whole or part of a trade carried on by it in the United Kingdom to a qualifying company resident in another member State (company B),

(b) the transfer is wholly in exchange for securities issued by company B to company A,

(c) a claim is made under this section by company A and company B,

(d) section 140B does not prevent this section applying, and

(e) the appropriate condition is met in relation to company B immediately after the time of the transfer.

(2) Where immediately after the time of the transfer company B 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 10(3).

(3) Where immediately after the time of the transfer company B 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) the two companies shall be treated, so far as relates to corporation tax on chargeable gains, as if any assets included in the transfer were acquired by company B from company A 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 company A;

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

(5) For the purposes of subsection (1)(a) above, a company shall be regarded as resident in a member State if it is within a charge to tax under the law of the State because it is regarded as resident for the purposes of the charge.

(6) For the purposes of subsection (5) above, a company shall be treated as not within a charge to tax under the law of a member State if it falls to be regarded for the purposes of any double taxation relief arrangements to which the State is a party as resident in a territory which is not within any of the member States.

(7) In this section—

"qualifying company" means a body incorporated under the law of a member State;

"securities" includes shares.

140B Section 140A: anti-avoidance

(1) Section 140A shall not apply unless the transfer of the trade 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 company A and company B 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."

45 Transfer of a non-UK trade: amendment of 1992 Act

The Taxation of Chargeable Gains Act 1992 shall have effect, and be deemed always to have had effect, with the insertion of the following sections after section 140B—

"**140C Transfer of a non-UK trade**

(1) This section applies where—

(a) a qualifying company resident in the United Kingdom (company A)

transfers to a qualifying company resident in another member State (company B) the whole or part of a trade which, immediately before the time of the transfer, company A carried on in a member State other than the United Kingdom through a branch or agency,

(b) the transfer includes the whole of the assets of company A used for the purposes of the trade or part (or the whole of those assets other than cash),

(c) the transfer is wholly or partly in exchange for securities issued by company B to company A,

(d) the aggregate of the chargeable gains accruing to company A on the transfer exceeds the aggregate of the allowable losses so accruing,

(e) a claim is made under this section by company A, and

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

(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 company A 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.

(6) For the purposes of subsection (1)(a) above—

(a) a company shall not be regarded as resident in the United Kingdom if it falls to be regarded for the purposes of any double taxation relief arrangements to which the United Kingdom is a party as resident in a territory which is not within any of the member States;

(b) a company shall be regarded as resident in another member State if it is within a charge to tax under the law of the State because it is regarded as resident for the purposes of the charge.

(7) For the purposes of subsection (6)(b) above, a company shall be treated as not within a charge to tax under the law of a member State if it falls to be regarded

for the purposes of any double taxation relief arrangements to which the State is a party as resident in a territory which is not within any of the member States.

(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 company A on the transfer, and the allowable losses so accruing, for the purposes of subsections (1)(d) and (3) above.

(9) In this section—

"qualifying company" means a body incorporated under the law of a member State;

"securities" includes shares.

140D Section 140C: anti-avoidance

(1) Section 140C shall not apply unless the transfer of the trade 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 company A 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."

46 Transfer of a trade: supplementary (1)

(1) The Taxation of Chargeable Gains Act 1992 shall have effect, and be deemed always to have had effect, with the following amendments.

(2) In section 35(3)(d)(i) (re-basing) after "139," there shall be inserted "140A,".

(3) In section 116(11) (qualifying corporate bonds) after "139," there shall be inserted "140A,".

(4) In section 140 (transfer of assets to non-resident company) the following subsection shall be inserted after subsection (6)—

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

(5) In section 174 (disposal or acquisition outside a group)—

(a) in subsection (2) after the word "section" (in the first place where it occurs) there shall be inserted "140A,";

(b) in subsection (3) after "section" there shall be inserted "140A,".

(6) In section 177(2) (dividend stripping) after "which section" there shall be inserted "140A,".

(7) In section 184(2) (indexation)—

(a) after the word "section" (in the first place where it occurs) there shall be inserted "140A,";
(b) for "either" there shall be substituted "one".

47 Transfer of a UK trade: amendment of 1970 Act

Subject to the repeals made by the Taxation of Chargeable Gains Act 1992, in relation to transfers taking effect on or after 1st January 1992 the Income and Corporation Taxes Act 1970 shall have effect, and be deemed to have had effect, with the insertion of the following after section 269—

"Transfers concerning companies of different member States

269A Transfer of a UK trade

(1) This section applies where—
(a) a qualifying company resident in one member State (company A)

transfers the whole or part of a trade carried on by it in the United Kingdom to a qualifying company resident in another member State (company B),
(b) the transfer is wholly in exchange for securities issued by company B to company A,
(c) a claim is made under this section by company A and company B,
(d) section 269B below does not prevent this section applying, and
(e) the appropriate condition is met in relation to company B immediately after the time of the transfer.

(2) Where immediately after the time of the transfer company B 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 11(2)(b) of the Taxes Act 1988.

(3) Where immediately after the time of the transfer company B 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) the two companies shall be treated, so far as relates to corporation tax on chargeable gains, as if any assets included in the transfer were acquired by company B from company A 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 company A;
(b) section 127(3) of the Finance Act 1989 (deemed disposal at market value) shall not apply to any such assets by reason of the transfer (if it would apply apart from this paragraph).

(5) For the purposes of subsection (1)(a) above, a company shall be regarded as resident in a member State if it is within a charge to tax under the law of the State because it is regarded as resident for the purposes of the charge.

(6) For the purposes of subsection (5) above, a company shall be treated as not within a charge to tax under the law of a member State if it falls to be regarded for the purposes of any double taxation relief arrangements to which the State is a party as resident in a territory which is not within any of the member States.

(7) In this section—

"qualifying company" means a body incorporated under the law of a member State;

"securities" includes shares.

269B Section 269A: anti-avoidance

(1) Section 269A above shall not apply unless the transfer of the trade 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 company A and company B 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 88 of the Capital Gains Tax Act 1979 shall have effect in relation to subsection (2) above as they have effect in relation to subsection (1) of that section."

48 Transfer of a non-UK trade: amendment of 1970 Act

Subject to the repeals made by the Taxation of Chargeable Gains Act 1992, in relation to transfers taking effect on or after 1st January 1992 the Income and Corporation Taxes Act 1970 shall have effect, and be deemed to have had effect, with the insertion of the following sections after section 269B—

"**269C Transfer of a non-UK trade**

(1) This section applies where—

(a) a qualifying company resident in the United Kingdom (company A)

transfers to a qualifying company resident in another member State (company B) the whole or part of a trade which, immediately before the time of the transfer, company A carried on in a member State other than the United Kingdom through a branch or agency,

(b) the transfer includes the whole of the assets of company A used for the purposes of the trade or part (or the whole of those assets other than cash),

(c) the transfer is wholly or partly in exchange for securities issued by company B to company A,

(d) the aggregate of the chargeable gains accruing to company A on the transfer exceeds the aggregate of the allowable losses so accruing,

(e) a claim is made under this section by company A, and

(f) section 269D below does not prevent this section applying.

(2) The Capital Gains Tax Act 1979 shall have effect in accordance with subsection (3) below.

(3) The allowable losses accruing to company A 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 268A above.

(5) In a case where this section applies, section 815A of the Taxes Act 1988 shall also apply.

(6) For the purposes of subsection (1)(a) above—

(a) a company shall not be regarded as resident in the United Kingdom if it falls to be regarded for the purposes of any double taxation relief arrangements to which the United Kingdom is a party as resident in a territory which is not within any of the member States;

(b) a company shall be regarded as resident in another member State if it is within a charge to tax under the law of the State because it is regarded as resident for the purposes of the charge.

(7) For the purposes of subsection (6)(b) above, a company shall be treated as not within a charge to tax under the law of a member State if it falls to be regarded for the purposes of any double taxation relief arrangements to which the State is a party as resident in a territory which is not within any of the member States.

(8) Section 442(3) of the Taxes Act 1988 (overseas business of UK insurance companies) shall be ignored in arriving at the chargeable gains accruing to company A on the transfer, and the allowable losses so accruing, for the purposes of subsections (1)(d) and (3) above.

(9) In this section—

"qualifying company" means a body incorporated under the law of a member State;

"securities" includes shares.

269D Section 269C: anti-avoidance

(1) Section 269C above shall not apply unless the transfer of the trade 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 company A 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 88 of the Capital Gains Tax Act 1979 shall have effect in relation to subsection (2) above as they have effect in relation to subsection (1) of that section."

49 Transfer of a trade: supplementary (2)

(1) Subject to the repeals made by the Taxation of Chargeable Gains Act 1992, the enactments mentioned in this section shall be amended as there mentioned.

(2) In section 268A of the Income and Corporation Taxes Act 1970 (transfer of assets to non-resident company) the following subsection shall be inserted after subsection (6) —

"(6A) No claim may be made under this section as regards a transfer in relation to which a claim is made under section 269C below."

(3) In section 275 of that Act (disposal or acquisition outside a group)—

(a) in subsection (1A) after the word "section" (in the first place where it occurs) there shall be inserted "269A,";

(b) in subsection (1B) after "section" there shall be inserted "269A,".

(4) In section 281(2) of that Act (dividend stripping) after "which section" there shall be inserted "269A,".

(5) In paragraph 10(2) of Schedule 13 to the Finance Act 1984 (qualifying corporate bonds) after paragraph (bb) there shall be inserted—

"(bc) section 269A of the Taxes Act (transfer of United Kingdom trade between companies of different member States); or".

(6) In section 68(7A)(b) of the Finance Act 1985 (indexation) after "267," there shall be inserted "269A,".

(7) In paragraph 1(3)(b) of Schedule 8 to the Finance Act 1988 (re-basing) after "267," there shall be inserted "269A,".

(8) In paragraph 5 of Schedule 11 to that Act (indexation)—

(a) after "section" there shall be inserted "269A,";

(b) the word "intra-group" shall be omitted;

(c) for "either" there shall be substituted "one".

(9) Subsections (3) and (4) above apply where the transfer referred to in section 269A takes effect on or after 1st January 1992.

(10) Subsections (5) to (7) above apply to any disposal by way of transfer where the transfer takes effect on or after 1st January 1992.

(11) Subsection (8) above applies where any disposal to which section 269A applies is by way of a transfer taking effect on or after 1st January 1992.