

*Status: Point in time view as at 21/07/2008. This version of this provision has been superseded.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Paragraph 87. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 29 **U.K.**

#### GAINS AND LOSSES OF A COMPANY FROM INTANGIBLE FIXED ASSETS

##### Modifications etc. (not altering text)

- C1 Sch. 29 applied (with modifications) (15.8.2002) by S.I. 2002/1967, **regs. 3-6**
- C1 Sch. 29 modified (5.10.2004) by **Energy Act 2004 (c. 20)**, s. 198(2), **Sch. 9 para. 28** (with s. 38(2)); S.I. 2004/2575, art. 2(1), Sch. 1
- C1 Sch. 29 modified (8.6.2005) by **Railways Act 2005 (c. 14)**, s. 60(2), **Sch. 10 para. 6**; S.I. 2005/1444, art. 2(1), Sch. 1
- C1 Sch. 29 modified (8.6.2005) by **Railways Act 2005 (c. 14)**, s. 60(2), **Sch. 10 para. 17**; S.I. 2005/1444, art. 2(1), Sch. 1
- C1 Sch. 29 modified (E.W.) (1.1.2006) by **Clean Neighbourhoods and Environment Act 2005 (c. 16)**, **ss. 93(3)**, 108(3); S.I. 2005/3439, art. 2
- C1 Sch. 29 modified (19.7.2006) by **Finance Act 2006 (c. 25)**, **s. 136(2)(f)**
- C1 Sch. 29 modified (21.12.2007) by **Consumers, Estate Agents and Redress Act 2007 (c. 17)**, s. 66(2), **Sch. 4 para. 10** (with s. 6(9)); S.I. 2007/3546, art. 3, Sch.

### PART 11 **U.K.**

#### TRANSFER OF BUSINESS OR TRADE

##### *[<sup>F1</sup>Transfer of non-UK business]*

87 <sup>F2</sup>(1) This paragraph applies where—

- (a) an EU company resident in the United Kingdom (“the transferor”) transfers to an EU company resident in another member State (“the transferee”) the whole or part of a business that, immediately before the time of the transfer, the transferor carried on in a member state other than the United Kingdom (“the other member State”) through a permanent establishment,
- (b) the transfer—
  - (i) includes the whole of the assets of the transferor used for the purposes of the business or part (or the whole of those assets other than cash), and
  - (ii) is wholly or partly in exchange for securities issued by the transferee to the transferor,
- (c) the transfer includes intangible fixed assets—
  - (i) that are chargeable intangible assets in relation to the transferor immediately before the transfer, and
  - (ii) in the case of one or more of which the proceeds of realisation exceed the costs recognised for tax purposes, and
- (d) the transferor makes a claim under this paragraph.

---

*Status: Point in time view as at 21/07/2008. This version of this provision has been superseded.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Paragraph 87. (See end of Document for details)*

---

- (1A) This paragraph also applies where an EU company resident in the United Kingdom transfers part of its business to one or more EU companies—
- (a) immediately before the time of the transfer, the transferor was carrying on the part of its business to be transferred in the other member State through a permanent establishment,
  - (b) at least one transferee is resident in a member State other than the United Kingdom,
  - (c) the transferor continues to carry on a business,
  - (d) the conditions in sub-paragraph (1)(b)(i), (c) and (d) 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.
- (1D) 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) Where tax would have been chargeable under the law of the other member State in respect of the transfer of [<sup>F3</sup>the intangible fixed assets] but for the Mergers Directive, Part 18 of the Taxes Act 1988 (double taxation relief), including any arrangements having effect by virtue of section 788 of that Act (bilateral relief), shall apply as if the amount of tax, calculated on the required basis, that would have been payable under that law in respect of the transfer of those assets but for that Directive, were tax payable under that law.
- (3) For this purpose “the required basis” is that—
- (a) so far as permitted under the law of the other member State, any losses arising on the transfer [<sup>F4</sup>of those intangible fixed assets] are set against any gains so arising, and
  - (b) any relief available to the transferor under that law has been duly claimed.
- (4) In this paragraph—
- “EU company” means a body incorporated under the law of a member State;
- “the Mergers Directive” means the Directive of the Council of the European Communities dated 23rd July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different member States (No.90/434/EEC);
- “securities” includes shares.
- (5) For the purposes of this paragraph a company is 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.

For this purpose 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.

*Status: Point in time view as at 21/07/2008. This version of this provision has been superseded.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, Paragraph 87. (See end of Document for details)*

- (6) No claim may be made under this paragraph as regards a transfer in relation to which a claim is made under paragraph 86 (postponement of charge on transfer of assets to non-resident company).
- (7) This paragraph applies only if the transfer of the [<sup>F5</sup>business] or part—
- (a) is effected for bona fide commercial reasons, and
  - (b) 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.
- (8) The requirements of sub-paragraph (7) are treated as met where, before the transfer, the Inland Revenue have, on the application of the transferor, notified that company that they are satisfied that the requirements of that sub-paragraph will be met.

For the procedure on such an application, see paragraph 88.

#### Textual Amendments

- F1** Sch. 29 para. 87 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. 22(4)**
- F2** Sch. 29 para. 87(1)-(1D) substituted for Sch. 29 para. 87(1) (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. 22(2)**
- F3** Words in Sch. 29 para. 87(2) substituted (with effect in accordance with reg. 3 of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2008 \(S.I. 2008/1579\)](#), **Sch. 3 para. 16(2)**
- F4** Words in Sch. 29 para. 87(3) inserted (with effect in accordance with reg. 3 of the amending S.I.) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2008 \(S.I. 2008/1579\)](#), **Sch. 3 para. 16(3)**
- F5** Word in Sch. 29 para. 87(7) 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. 22(3)**

#### Modifications etc. (not altering text)

- C1** Sch. 29 para. 87 modification to earlier affecting provision S.I. 2007/3186, reg. 3(1) (8.7.2008) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2008 \(S.I. 2008/1579\)](#), regs. 1(2), **4(1)**
- C2** Sch. 29 para. 87(1)-(1D) modification to earlier affecting provision S.I. 2007/3186, reg. 3(1) (8.7.2008) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2008 \(S.I. 2008/1579\)](#), regs. 1(2), **4(1)**
- C3** Sch. 29 para. 87(1D) 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. 4(g)** (with reg. 6(2))
- C4** Sch. 29 para. 87(7) modification to earlier affecting provision S.I. 2007/3186, reg. 3(1) (8.7.2008) by [The Corporation Tax \(Implementation of the Mergers Directive\) Regulations 2008 \(S.I. 2008/1579\)](#), regs. 1(2), **4(1)**

**Status:**

Point in time view as at 21/07/2008. This version of this provision has been superseded.

**Changes to legislation:**

There are currently no known outstanding effects for the Finance Act 2002, Paragraph 87.