

Status: Point in time view as at 01/04/2009.

Changes to legislation: There are currently no known outstanding effects for the Railways Act 2005, Part 2. (See end of Document for details)

SCHEDULES

SCHEDULE 10

TAXATION PROVISIONS RELATING TO TRANSFER SCHEMES

PART 2

OTHER TRANSFERS UNDER SECTION 1(2) SCHEMES

Meaning of “relevant transfer” in Part 2 of Schedule

- 9 In this Part of this Schedule, “relevant transfer” means a transfer in accordance with a scheme made under section 1(2) to a person other than a national authority.

Commencement Information

- II** Sch. 10 para. 9 in force at 8.6.2005 by S.I. 2005/1444, art. 2(1), Sch. 1

Computation of profits and losses in respect of transfer of trade

- 10 (1) This paragraph applies where a person (“the predecessor”) is carrying on a trade or a part of a trade and, in consequence of a scheme made under section 1(2)—
- the predecessor ceases to carry on that trade or that part of that trade; and
 - a person who is not a national authority (“the successor”) begins to carry on that trade or that part of it.
- (2) For the purpose of computing, in relation to the time when the scheme comes into force and subsequent times, the relevant trading profits or losses of the predecessor and the successor—
- the trade or part is to be treated as having been a separate trade at the time of its commencement and as having been carried on by the successor at all times since its commencement as a separate trade; and
 - the trade carried on by the successor after the time when the scheme comes into force is to be treated as the same trade as that which it is treated, by virtue of paragraph (a), as having carried on as a separate trade before that time.
- (3) Where a trade or a part of a trade falls to be treated under this paragraph as a separate trade, such apportionments of receipts, expenses, assets and liabilities shall be made for the purpose of computing relevant trading profits and losses as may be just and reasonable.
- (4) This paragraph is subject to paragraphs 12 and 18.
- (5) In this paragraph, “relevant trading profits and losses” means profits or losses [F1]under Part 3 of the Corporation Tax Act 2009 in respect of the trade or part of a

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trade in question for periods in which the trade was carried on wholly or partly in the United Kingdom.]

Textual Amendments

- F1** Words in [Sch. 10 para. 10\(5\)](#) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 667\(3\)](#) (with [Sch. 2 Pts. 1, 2](#))

Commencement Information

- I2** [Sch. 10 para. 10](#) in force at 8.6.2005 by [S.I. 2005/1444](#), art. 2(1), [Sch. 1](#)

Trading losses: change in ownership

- 11 (1) This paragraph applies to a relevant transfer of all the issued share capital of a company (the “transferred company”).
- (2) For the purposes of sections 768 and 768D of the Taxes Act, the transfer is not to be taken to result in a change in the ownership of—
- (a) the transferred company; or
 - (b) a company which is a wholly-owned subsidiary of the transferred company when the transfer takes effect.

Commencement Information

- I3** [Sch. 10 para. 11](#) in force at 8.6.2005 by [S.I. 2005/1444](#), art. 2(1), [Sch. 1](#)

Capital allowances: transfer of whole trade

- 12 (1) This paragraph applies where a person (“the predecessor”) is carrying on a trade and, in consequence of a scheme made under section 1(2)—
- (a) the predecessor ceases to carry on that trade; and
 - (b) a person who is not a national authority (“the successor”) begins to carry on that trade.
- (2) For the purposes of the allowances and charges provided for by the 2001 Act, the trade is not to be treated as permanently discontinued, nor a new trade as set up; but sub-paragraphs (3) and (4) of this paragraph are to apply.
- (3) There are to be made to or on the successor, in accordance with the 2001 Act, all such allowances and charges as would, if the predecessor had continued to carry on the trade, have fallen to be made to or on the predecessor.
- (4) The amounts of those allowances and charges are to be computed as if—
- (a) the successor had been carrying on the trade since the predecessor began to do so; and
 - (b) everything done to or by the predecessor had been done to or by the successor;
- but so that transfers in accordance with the scheme, so far as they relate to assets in use for the purposes of the trade, shall not be treated as giving rise to an allowance or charge.

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Commencement Information

I4 Sch. 10 para. 12 in force at 8.6.2005 by S.I. 2005/1444, art. 2(1), Sch. 1

Capital allowances: transfer of part of a trade

- 13 (1) Where a person (“the predecessor”) is carrying on a trade and, in consequence of a scheme made under section 1(2)—
- (a) the predecessor ceases to carry on a trade, and
 - (b) a person who is not a national authority (“the successor”) begins to carry on activities of that trade as part of a trade carried on by the successor,
- then that part of the trade carried on by the successor shall be treated for the purposes of paragraph 12 as a separate trade.
- (2) Where a person (“the predecessor”) is carrying on a trade and, in consequence of a scheme made under section 1(2)—
- (a) the predecessor ceases to carry on a part of a trade, and
 - (b) a person who is not a national authority begins to carry on activities of that part of that trade,
- then the predecessor shall be treated for the purposes of paragraph 12 and sub-paragraph (1) of this paragraph as having carried on that part of its trade as a separate trade.
- (3) Where activities fall to be treated for the purposes of this paragraph as a separate trade, such apportionments of receipts, expenses, assets and liabilities shall be made for the purposes of the 2001 Act as may be just and reasonable.

Commencement Information

I5 Sch. 10 para. 13 in force at 8.6.2005 by S.I. 2005/1444, art. 2(1), Sch. 1

Capital allowances: transfer of plant or machinery

- 14 (1) This paragraph applies where—
- (a) there is a relevant transfer of plant or machinery;
 - (b) paragraph 12 does not apply in relation to that transfer;
 - (c) the plant or machinery would be treated for the purposes of the 2001 Act as disposed of by the transferor to the transferee on the transfer taking effect; and
 - (d) the scheme in accordance with which the transfer is made contains provision for the disposal value of the plant or machinery to be treated for the purposes of that Act as an amount specified in or determined in accordance with the scheme.
- (2) For the purposes of the 2001 Act—
- (a) the provision mentioned in sub-paragraph (1)(d) is to have effect (instead of section 61(2) to (4), 72(3) to (5), 88, 171, 196 or 423 of that Act) for determining an amount as the disposal value of the plant or machinery or the price at which a fixture is to be treated as sold;

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- (b) the transferee is to be treated as having incurred capital expenditure of that amount on the provision of the plant or machinery for the purposes for which it is used by the transferee on and after the taking effect of the transfer;
 - (c) the property is to be treated as belonging to the transferee in consequence of the transferee having incurred that expenditure; and
 - (d) in the case of a fixture, the expenditure which falls to be treated as incurred by the transferee is to be treated for the purposes of sections 181(1) and 182(1) of that Act to be incurred by the giving of a consideration consisting in a capital sum of that amount.
- (3) The provision mentioned in sub-paragraph (1)(d) for the determination of an amount may include provision for a determination—
- (a) to be made by the Secretary of State in a manner described in the scheme;
 - (b) to be made by reference to factors so described or to the opinion of a person so described; and
 - (c) to be capable of being modified (on one or more occasions) in a manner and in circumstances so described.
- (4) The consent of the Treasury is required for the making or modification of a determination under the provision mentioned in sub-paragraph (1)(d).
- (5) The consent of the transferee is required for the modification of a determination under the provision mentioned in sub-paragraph (1)(d).
- (6) If there is a determination or a modification of a determination under the provision mentioned in sub-paragraph (1)(d), all necessary adjustments—
- (a) must be made by making assessments or by repayment or discharge of tax; and
 - (b) must be made despite any limitation on the time within which assessments may be made.
- (7) Expressions used in this paragraph and in Part 2 of the 2001 Act have the same meanings in this paragraph as in that Part.

Commencement Information

I6 Sch. 10 para. 14 in force at 8.6.2005 by S.I. 2005/1444, art. 2(1), Sch. 1

Capital allowances: determination of capital value of industrial buildings etc.

- 15 (1) This paragraph applies for the purposes of Part 3 of the 2001 Act, and the other provisions of that Act which are relevant to that Part, to a relevant transfer of the relevant interest in an industrial building or structure.
- (2) Section 573 of that Act is not to have effect in relation to that transfer.

Commencement Information

I7 Sch. 10 para. 15 in force at 8.6.2005 by S.I. 2005/1444, art. 2(1), Sch. 1

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Chargeable gains: assets to be treated as disposed of without a gain or a loss

- 16 For the purposes of the 1992 Act, a relevant transfer of an asset is to be treated as a disposal of that asset to the transferee for a consideration of such amount as would secure that, on the disposal, neither a gain nor a loss accrues to the transferor.

Commencement Information

- I8** Sch. 10 para. 16 in force at 8.6.2005 by S.I. 2005/1444, art. 2(1), Sch. 1

Continuity in relation to transfer of intangible assets

- 17 (1) For the purposes of [F²Part 8 of the Corporation Tax Act 2009]—
- (a) a relevant transfer of a chargeable intangible asset of the transferor is to be treated as a tax-neutral transfer; and
 - (b) an intangible fixed asset which is [F²a pre-FA 2002 asset] of the transferor at the time of the transfer is to be treated, on and after the transfer, as [F²a pre-FA 2002 asset] in the hands of the transferee.
- (2) Expressions used in this paragraph and in [F³that Part] have the same meanings in this paragraph as in [F³that Part].

Textual Amendments

- F2** Words in Sch. 10 para. 17(1) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 667(4)(a) (with Sch. 2 Pts. 1, 2)
- F3** Words in Sch. 10 para. 17(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 667(4)(b) (with Sch. 2 Pts. 1, 2)

Commencement Information

- I9** Sch. 10 para. 17 in force at 8.6.2005 by S.I. 2005/1444, art. 2(1), Sch. 1

Continuity in relation to loan relationships

- 18 (1) For the purposes of the application of [F⁴Part 5 of the Corporation Tax Act 2009] (loan relationships) in relation to a relevant transfer, the transferee and the transferor are to be treated as if, at the time of the transfer, they were members of the same group.
- (2) In sub-paragraph (1), the reference to being members of the same group must be construed in accordance with [F⁵section 335(6) of] that Act.

Textual Amendments

- F4** Words in Sch. 10 para. 18(1) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 667(5)(a) (with Sch. 2 Pts. 1, 2)
- F5** Words in Sch. 10 para. 18(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 667(5)(b) (with Sch. 2 Pts. 1, 2)

Commencement Information

- I10** Sch. 10 para. 18 in force at 8.6.2005 by S.I. 2005/1444, art. 2(1), Sch. 1

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Continuity in relation to derivative contracts

- 19 (1) For the purposes of the application of [^{F6}Part 7 of the Corporation Tax Act 2009 (derivative contracts)] in relation to a relevant transfer, the transferee and the transferor are to be treated as if, at the time of the transfer, they were members of the same group.
- (2) In sub-paragraph (1), the reference to being members of the same group must be construed in accordance with [^{F7}section 624(3) of that Act].

Textual Amendments

- F6** Words in [Sch. 10 para. 19\(1\)](#) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 667\(6\)\(a\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F7** Words in [Sch. 10 para. 19\(2\)](#) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 667\(6\)\(b\)](#) (with [Sch. 2 Pts. 1, 2](#))

Commencement Information

- I11** [Sch. 10 para. 19](#) in force at 8.6.2005 by [S.I. 2005/1444](#), art. 2(1), [Sch. 1](#)

Leased assets

- 20 (1) This paragraph applies for the purposes of section 781 of the Taxes Act (assets leased to traders and others) where—
- (a) the interest of the lessor or the lessee under a lease, or any other interest in an asset, is transferred under a relevant transfer; or
 - (b) a lease, or any other interest in a lease, is granted to a person who is not a national authority in accordance with provision contained by virtue of paragraph 3 or 4 of Schedule 2 in a scheme made under section 1(2).
- (2) Section 783(4) of that Act is to be disregarded and the transfer or grant is to be treated as made without any capital sum having been obtained in respect of the interest or lease by the transferor or grantor.
- (3) In the case of the transfer of an interest under a lease, payments made by the transferor under the lease before the transfer takes effect are to be treated as if they had been made under that lease by the transferee.
- (4) Expressions used in this paragraph and in sections 781 to 785 of that Act have the same meanings in this paragraph as in those sections.

Commencement Information

- I12** [Sch. 10 para. 20](#) in force at 8.6.2005 by [S.I. 2005/1444](#), art. 2(1), [Sch. 1](#)

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