



# Finance (No. 2) Act 2005

## 2005 CHAPTER 22

### PART 4

#### EUROPEAN COMPANY STATUTE

#### 64 Held-over gains

- (1) In section 116(11) of TCGA 1992 (shares: reorganisation, etc) after “140A,” insert “140E,”.
- (2) After section 140(6A) of that Act (postponement of charge on transfer of assets to foreign company) insert—
  - “(6B) If, as part of the process of a merger forming an SE in circumstances in which section 140E applies, securities are transferred to the SE by a transferor company—
    - (a) the transfer to the SE shall be disregarded for the purposes of subsection (4), and
    - (b) the SE 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 company of assets to which subsection (5) applies.”
- (3) After section 154(2) of that Act (held over gains: depreciating assets) insert—
  - “(2A) If, as part of the process of a merger forming an SE in circumstances in which section 140E applies, asset No 2 or shares in a company which holds asset No 2 are transferred to the SE, the transfer to the SE shall be disregarded for the purposes of subsection (2), and—
    - (a) if the SE holds asset No 2, it shall be treated for the purposes of subsection (2), in relation to asset No 2, as if it were the claimant, or
    - (b) if the SE holds shares in the company which holds asset No 2, section 175 shall apply in relation to the group of which the SE is

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*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 2005, Section 64. (See end of Document for details)*

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a member as if it were the same group as any group of which the claimant was a member before the formation of the SE.

(2B) If, as part of the process of a merger forming an SE in circumstances in which section 140E applies, the SE becomes a member (whether or not as the principal company) of a group of which the claimant is also a member, for the purposes of subsection (2) section 175 shall apply in relation to the trade carried on by the claimant as if the group of which the SE is a member were the same group as the group of which the claimant was a member before the formation of the SE.”

(4) After section 179(1A) of that Act (company ceasing to be member of group) insert—

“(1B) Where, as part of the process of a merger to form an SE in circumstances in which section 140E applies, a company which is a member of a group (“Group 1”) ceases to exist and in consequence of that cessation—

- (a) assets are transferred to the SE, or
- (b) shares in one or more companies which were also members of the group are transferred to the SE,

a company which has ceased to exist, or the shares in which have been transferred to the SE, shall not be treated for the purposes of this section as having left Group 1.

(1C) If subsection (1B) applies in relation to a company then for the purposes of this section—

- (a) the SE and a company which has ceased to exist in consequence of the merger to form the SE shall be treated as the same entity, and
- (b) if the SE is a member of a group (“Group 2”) following its formation (whether or not as the principal company of the group) a company which was a member of Group 1 and became a member of Group 2 in consequence of the formation of the SE shall be treated, for the purposes of this section, as if Group 1 and Group 2 were the same.”

(5) This section shall have effect in relation to the formation of an SE in accordance with Article 2 of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea) which occurs on or after 1st April 2005.

**Changes to legislation:**

There are currently no known outstanding effects for the Finance (No. 2) Act 2005, Section 64.