



# Taxation (International and Other Provisions) Act 2010

## 2010 CHAPTER 8

### PART 2

#### DOUBLE TAXATION RELIEF

### CHAPTER 3

#### MISCELLANEOUS PROVISIONS

#### *European cross-border mergers*

- 119 Tax treated as chargeable in respect of transfer of loan relationship, derivative contract or intangible fixed assets**
- (1) If tax would have been chargeable under the law of one or more other member States in respect of the transfer mentioned in section 118(6)(a), (b) or (c) but for the Mergers Directive, this Part applies, and any double taxation arrangements apply, as if that tax had been chargeable.
  - (2) In calculating tax notionally chargeable under subsection (1) in respect of the transfer mentioned in section 118(6)(a) or (b), it is to be assumed—
    - (a) that, to the extent permitted by the law of the other member State, losses arising on that transfer are set against gains arising on that transfer, and
    - (b) that any relief due to company A under that law is claimed.
  - (3) Subsection (1) does not apply if—
    - (a) the merger is not effected for genuine commercial reasons, or
    - (b) the merger forms part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.

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*Status: This is the original version (as it was originally enacted).*

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- (4) But subsection (3) does not prevent subsection (1) from applying if before the merger—
- (a) any of the merging companies has applied to the Commissioners for Her Majesty's Revenue and Customs, and
  - (b) the Commissioners have notified the merging companies that they are satisfied subsection (3) will not have that effect.
- (5) Sections 427 and 428 of CTA 2009 (procedure and decisions on applications for clearance) have effect in relation to subsection (4) as in relation to section 426(2) of that Act, taking the references in section 428 to section 426(2)(b) as references to subsection (4)(b) of this section.
- (6) In this section “company A”, “the merger” and “the merging companies” have the same meaning as in section 118.