

SCHEDULE 1

CROSS-BORDER TRANSFERS OF BUSINESS

PART 4

AMENDMENTS OF FA 2002

Intangible fixed assets

22.—(1) Paragraph 87 of Schedule 29 (transfer of non-UK trade) is amended as follows,

(2) For sub-paragraph (1)(1) substitute—

“(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.

(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

(1) Paragraph 87(1) was amended by section 153 of the Finance Act 1993.

Status: This is the original version (as it was originally made).

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.”

- (3) In sub-paragraph (7) for “trade” substitute “business”.
- (4) The heading accordingly becomes “Transfer of non-UK business”.