

SCHEDULE 2

EUROPEAN CROSS-BORDER MERGERS

PART 3

AMENDMENTS OF FA 2002

12. For paragraph 87A of Schedule 29 (SEs: transfer of non-UK trade)^{M1} substitute—

“European cross-border merger: transfer of non-UK business

87A.—(1) This paragraph applies on a merger which satisfies the conditions specified in sub-paragraph (2), where—

- (a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea),
- (b) an SCE is formed by the merger of two or more cooperative societies, at least one of which is a society registered under the Industrial and Provident Societies Act 1965, in accordance with Articles 2(1) and 19 of Council Regulation (EC) 1435/ 2003 on the Statute for a European Cooperative Society (SCE),
- (c) the merger is effected by the transfer by one or more companies of all their assets and liabilities to a single existing company, or
- (d) the merger is effected by the transfer by two or more companies of all their assets and liabilities to a single new company (other than an SE or an SCE) in exchange for the issue by the transferee, to each person holding shares in or debentures of a transferor, of shares or debentures.

(2) The conditions mentioned in sub-paragraph (1) are that—

- (a) each merging company is resident in a member State,
- (b) the merging companies are not all resident in the same State,
- (c) in the course of the merger a company resident in the United Kingdom (“company A”) transfers to a company resident in another member State (“company B”) the whole or part of a business that, immediately before the transfer, company A carried on in a member State other than the United Kingdom through a permanent establishment,
- (d) the transfer includes the whole of the assets of company A used for the purposes of the business or part,
- (e) the transfer includes intangible fixed assets—
 - (i) that are chargeable intangible assets in relation to company A immediately before the transfer, and
 - (ii) in the case of one or more of which the proceeds of realisation exceed the cost recognised for tax purposes,
- (f) no claim is made under paragraph 86 in relation to those assets, and
- (g) in the case of a merger to which sub-paragraph (1)(a), (b) or (c) applies, either—
 - (i) the transfer of assets and liabilities is made in exchange for the issue by the transferee, to each person holding shares in or debentures of a transferor, of shares or debentures, or

Changes to legislation: There are currently no known outstanding effects for the The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007, Paragraph 12. (See end of Document for details)

- (ii) sub-paragraph (i) is not satisfied in relation to the transfer by reason only, and to the extent only, that the transferee is prevented from complying with that sub-paragraph by section 658 of the Companies Act 2006 (rule against limited company acquiring own shares) or a corresponding provision of the law of another member State preventing the issue of shares or debentures to itself.

(3) Where tax would, but for the Mergers Directive, have been chargeable in the member State in which the permanent establishment is located, Part 18 of the Taxes Act 1988 (double taxation relief), including any arrangements having effect by virtue of section 788 (double taxation agreements), shall have effect as if the amount of tax that would, but for the Mergers Directive, have been charged in respect of the transfer of the chargeable intangible assets, had actually been charged.

(4) In this paragraph “the Mergers Directive” has the same meaning as in paragraph 87.

(5) For the purposes of this paragraph—

(a) “cooperative society” means a society registered under the Industrial and Provident Societies Act 1965 or a similar society governed by the law of a member State other than the United Kingdom,

(b) “transferor” means—

(i) in relation to a merger to which sub-paragraph (1)(a) applies, each company merging to form the SE,

(ii) in relation to a merger to which sub-paragraph (1)(b) applies, each cooperative society merging to form the SCE, and

(iii) in relation to a merger to which sub-paragraph (1)(c) or (d) applies, each company transferring all of its assets and liabilities,

(c) “transferee” means—

(i) in relation to a merger to which sub-paragraph (1)(a) applies, the SE,

(ii) in relation to a merger to which sub-paragraph (1)(b) applies, the SCE, and

(iii) in relation to a merger to which sub-paragraph (1)(c) or (d) applies, the company to which assets and liabilities are transferred,

(d) references, other than references in sub-paragraph (1), to a company include references to a cooperative society, and

(e) a company is resident in a member State if—

(i) it is within a charge to tax under the law of the State as being resident for that purpose, and

(ii) it is not regarded, for the purposes of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.

(6) This paragraph applies only if a merger—

(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 avoiding liability to corporation tax, capital gains tax or income tax.

(7) The requirements of sub-paragraph (6) are treated as met where, before the transfer, the Commissioners for Her Majesty's Revenue and Customs have, on the application of the transferor, notified the transferor that they are satisfied that the merger will be effected for bona fide commercial reasons and will not form part of any such scheme or arrangements as are mentioned in sub-paragraph (6)(b).

(8) An application under sub-paragraph (7) must be made in accordance with paragraph 88.”.

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Marginal Citations

M1 Paragraph 87A was inserted by section 53 of the Finance (No. 2) Act 2005.

Changes to legislation:

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