

SCHEDULE 2

EUROPEAN CROSS-BORDER MERGERS

PART 4

AMENDMENTS OF CAA 2001, FA 1988 AND ICTA

Capital allowances

14. For section 561A of CAA 2001 (transfer during formation of SE by merger)(1) substitute—

“561A Transfer of asset by reason of cross-border merger

(1) This section applies to the transfer of a qualifying asset as part of the process of a merger to which section 140E(2) of TCGA 1992 (mergers: assets within UK tax charge) applies (or would apply but for section 140E(2)(c)).

(2) Where this section applies to a transfer—

- (a) the transfer does not give rise to any allowance or charge under this Act,
- (b) anything done to or by the transferor in relation to assets transferred is to be treated after the transfer as having been done to or by the transferee (with any necessary apportionment of expenditure being made in a reasonable manner), and
- (c) section 343 of ICTA(3) (company reconstruction without change of ownership) shall not apply.

(3) For the purposes of subsection (1) an asset is a “qualifying asset” if—

- (a) it is transferred to the transferee as part of the process of the merger, and
- (b) subsections (4) and (5) are satisfied in respect of it.

(4) This subsection is satisfied in respect of an asset if—

- (a) the transferor is resident in the United Kingdom at the time of the transfer, or
- (b) the asset is an asset of a permanent establishment in the United Kingdom of the transferor.

(5) This subsection is satisfied in respect of an asset if—

- (a) the transferee is resident in the United Kingdom at the time of the transfer, or
- (b) the asset is an asset of a permanent establishment of the transferee in the United Kingdom immediately following the transfer.”.

Residence of SCE

15.—(1) Section 66A of FA 1988 (residence of SE)(4) is amended as follows.

(2) For subsection (1) substitute—

“(1) This section applies in relation to—

(1) Section 516A was inserted by section 56 of the Finance (No. 2) Act 2005.
(2) Section 140E is inserted by paragraph 2 of Schedule 2 to these Regulations.
(3) 1988 c. 1.
(4) Section 66A was inserted by section 60(1) of the Finance (No. 2) Act 2005.

Status: This is the original version (as it was originally made).

- (a) an SE which transfers its registered office to the United Kingdom (in accordance with Article 8 of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea)), and
 - (b) an SCE which transfers its registered office to the United Kingdom (in accordance with Article 7 of Council Regulation (EC) 1435/2003 on the Statute for a European Cooperative Society (SCE)).”.
- (3) In subsections (2) and (3) after “SE” insert “or SCE”.
- (4) The heading accordingly becomes “Residence of SE or SCE”.

Tax treatment of SCE

16. In section 486(12) (industrial and provident societies and co-operative associations) of ICTA for the definition of “registered industrial and provident society” substitute—

““registered industrial and provident society” means—

- (a) a society registered or deemed to be registered under the Industrial and Provident Societies Act 1965⁽⁵⁾ or under the Industrial and Provident Societies Act (Northern Ireland) 1969⁽⁶⁾, or
- (b) an SCE formed in accordance with Council Regulation (EC) 1435/2003 on the Statute for a European Co-Operative Society⁽⁷⁾.”.

⁽⁵⁾ 1965 c. 12.

⁽⁶⁾ 1969 c. 24.

⁽⁷⁾ OJ L 207, 18.8.2003. p1.