
EXPLANATORY NOTE

(This note is not part of the Regulation)

These Regulations amend primary legislation to ensure that the United Kingdom's tax legislation is compliant with its obligations under Directive [90/434/EEC](#) of the European Parliament and of the Council of 26th October 2005 on cross-border mergers of limited liability companies (OJ L 58, 4.3.2005 p.19) as amended by Council Directive [2005/19/EC](#) of 17 February 2005 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different member states (OJ L 310, 25.11.2005 p.11) ("the Mergers Directive"). It should be read with the Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 ([S.I. 2007/3186](#)) (the 2007 Regulations).

Regulation 1 provides for citation, commencement and effect. Regulation 2 provides definitions for certain expressions used in the instrument.

Regulation 3 provides for Schedules 1 to 3 which make amendments to the Taxation of Chargeable Gains Act 1992 ([c. 12](#)), the Finance Act 1996 ([c. 8](#)) and the Finance Act 2002 ([c.23](#)) relating to cross border mergers and cross-border transfers of business to have effect. The regulation further provides that the amendment will have effect in relation to mergers that relate to the formation of an SE or an SCE which take place on or after 18th August 2006 and in relation to other mergers and transfers which take place on or after 1st January 2007. The authority for the retrospective effect of regulation 3 and generally is found at section 110(5)(c) of the Finance Act 2007 ([c.11](#))

Regulation 4 provides that regulation 3(1) and (3) of the 2007 Regulations should have effect in relation to cross-border mergers and transfers from the dates specified and this commencement is deemed always to have had effect.

Regulation 5 provides for the repeal of paragraph 10 of Schedule 1 to the 2007 Regulations. It further provides that this is to be treated as if it was never included in those Regulations.

Regulation 6 provides transitional provision in relation to section 658 of the Companies Act 2006 ([c. 46](#)) (rule against limited company acquiring own shares) where this section is mentioned in provisions implementing the Mergers Directive. Section 658 of the Companies Act 2006 is not yet in force. Regulation 6 provides for references to section 658 in the provisions mentioned in Schedule 4 to have effect until the commencement of that section as if they were references to section 143 of the Companies Act 1985 ([c. 6](#)) (general rule against companies acquiring own shares).

Schedule 1 sets out amendments to the Taxation of Chargeable Gains Act 1992. Schedule 2 sets out amendments to the Finance Act 1996. Schedule 3 sets out amendments to Schedule 26 and Schedule 29 to the Finance Act 2002. Schedule 4 lists provisions implementing the Mergers Directive that mention section 658 of the Companies Act 2006.

A transposition note has been prepared which sets out how the main elements of the Mergers directive will be transposed into UK law. A Regulatory Impact Assessment of the effect of the implementation of the Mergers Directive on the costs of business has been prepared. Both may be obtained from the CT & VAT team, HMRC, 100 Parliament Street, London SW1A 2HQ. They are also available on the HMRC website (www.hmrc.gov.uk). Copies of both documents have been placed in the library of the House of Commons.