

**EXPLANATORY MEMORANDUM TO  
THE CORPORATION TAX (IMPLEMENTATION OF THE MERGERS  
DIRECTIVE) REGULATIONS 2011**

**2011 No. 1431**

1. This explanatory memorandum has been prepared by HM Revenue and Customs (“HMRC”) and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 The Regulations implement the codifying Directive 2009/133/EC of the Council of the European Union of 19 October 2009 on cross border mergers of limited liability companies (“the Mergers Directive”).

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 The Regulations are being made under section 2(2) of the European Communities Act 1972 (“the ECA”). They do not impose or increase a tax charge, therefore they do not contravene the restriction in Schedule 2 to the ECA, which prohibits statutory instruments being made under section 2(2) for such purposes.

- 3.2 The Regulations are being made under section 2(2) of the ECA rather than section 110 Finance Act 2007 (“FA 2007”), which provides the primary vires for implementation of the Mergers Directive. The reason for this is that the section 110 FA 2007 power does not allow for regulations to be made which codify existing arrangements. The power under section 110 FA 2007 only enables provision to be made about the tax consequences of a merger in certain circumstances.

4. **Legislative Context**

- 4.1 The Regulations make consequential amendments to tax legislation to take account of the Mergers Directive. The Acts affected are the Taxation of Chargeable Gains Act 1992 (c. 12), the Finance Act 2007 (c. 11), the Corporation Tax Act 2009 (c. 4) and the Taxation (International and Other Provisions) Act 2010 (c. 8).

5. **Territorial Extent and Application**

- 5.1 The Regulations apply to all of the United Kingdom.

## **6. European Convention on Human Rights**

The Exchequer Secretary to the Treasury, David Gauke, has made the following statement regarding Human Rights:

“In my view the provisions of the Corporation Tax (Implementation of the Mergers Directive) Regulations 2011 are compatible with the Convention rights.”

## **7. Policy background**

- *What is being done and why*

7.1 The original Directive (90/434/EEC) was introduced in 1990 and detailed the tax consequences of certain transactions between companies in different EU Member States. This Directive was amended in 2005 by Directive 2005/19/EC to include both new transactions and corporate entities. The Mergers Directive codifies the original Directive and the 2005 amending Directive into a single Directive.

7.2 The provisions of the Corporation Tax (Implementation of the Mergers Directive) Regulations 2011 amend tax legislation to replace references to the original Directive and 2005 amending Directive respectively, with references to the Mergers Directive.

- *Consolidation*

7.3 Not applicable.

## **8. Consultation outcome**

8.1 No consultation has been undertaken as no substantive change to the UK's implementation of the EU rules on mergers is being made.

## **9. Guidance**

9.1 The Order does not impose any new obligations.

## **10. Impact**

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 In line with government commitments, a Tax information and Impact Note has not been prepared for this instrument as it gives effect to previously announced policy.

**11. Regulating small business**

11.1 The legislation applies to small business.

11.2 No separate approach is required to minimise the impact of the requirements on small firms employing up to 20 people.

**12. Monitoring & review**

12.1 HMRC has no plans to monitor the provisions of the Regulations since they merely amend references consequential to the implementation of the Mergers Directive.

**13. Contact**

Simon Moulden at HM Revenue and Customs (tel: 020 7147 2629 or email: [simon.moulden@hmrc.gsi.gov.uk](mailto:simon.moulden@hmrc.gsi.gov.uk)) can answer any queries regarding the Regulations.

**Implementation of the Council Directive 2009/133/EC of 19<sup>th</sup> October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different member states and to the transfer of the registered office of an SE or SCE between Member States.**

**Table of transposition of the main elements of the Directive:**

<b>Articles within the directive</b>	<b>Objective of the article</b>	<b>Implementation</b>
		<b>Introduction of /amendment to the following legislation.</b>
Article 4	Tax deferral at asset level on transactions	<p>1. Mergers</p> <ul style="list-style-type: none"> <li>• Section 140E TCGA 1992</li> <li>• Held over gains Sections 140(6B), 154 (2 A,B,C) and 179(1B) &amp; (1C) TCGA 1992</li> <li>• Sections 821, 822, 823, 831, 832 and 833 CTA 2009</li> <li>• Sections 431, 432, 433, 434, 437 and 439 CTA 2009</li> <li>• Sections 682, 683, 684, 685, 686 and 688 CTA 2009</li> <li>• Section 561A CAA 2001</li> </ul> <p>2. Transfer of Assets</p> <ul style="list-style-type: none"> <li>• Section 140A TCGA 1992</li> <li>• Sections 819, 820, 831, 832 and 833 CTA 2009</li> <li>• Sections 421, 422 and 423 CTA 2009</li> <li>• Sections 674, 675 and 676 CTA 2009</li> <li>• Section 561 CAA 2001</li> </ul> <p>3. Partial Divisions</p> <ul style="list-style-type: none"> <li>• Section 140A TCGA 1992</li> <li>• Held over gains: Sections 140(6AA) , S154 (2D) and S179 (1AA) TCGA 1992</li> <li>• Sections 819, 820, 831, 832 and 833 CTA 2009</li> </ul>

		<ul style="list-style-type: none"> <li>• Sections 421, 422 and 423 CTA 2009</li> <li>• Sections 674, 675 and 676 CTA 2009</li> <li>• Section 561 CAA 2001</li> </ul>
Article 8 1	Tax treatment of allotment of shares	1. Mergers <ul style="list-style-type: none"> <li>• Section 140G TCGA 1992</li> </ul> 2. Transfer of Assets <ul style="list-style-type: none"> <li>• Section 140DA TCGA 1992</li> <li>• Sections 335, 339, 342, 343, 421, 424, 425, 431, 435 and 436 CTA 2009</li> </ul> 3. Share Exchange <ul style="list-style-type: none"> <li>• Section 135 TCGA 1992</li> </ul>
2	Tax treatment of allotment of shares on partial divisions	<ul style="list-style-type: none"> <li>• Section 140DA TCGA 1992</li> <li>• Sections 1028, 1075, 1078, 1079, 1080, 1098, 1099, 1117 and 1176 CTA 2010</li> <li>• Sections 335, 339, 342, 343, 421, 424, 425, 431, 435 and 436 CTA 2009</li> </ul> Definitions <ul style="list-style-type: none"> <li>• Section 140L TCGA 1992</li> </ul>
3	Tax treatment of allotment of shares when entity treated as fiscally transparent	<ul style="list-style-type: none"> <li>• Section 140I TCGA 1992</li> <li>• Section 140J TCGA 1992</li> <li>• Sections 421 and 429 CTA 2009</li> <li>• Sections 120 and 121 TIOPA 2010</li> </ul>
Article 10 1	Renunciation of taxing rights where assets transferred include a permanent establishment in another member state	1. Mergers <ul style="list-style-type: none"> <li>• Section 140F TCGA 1992</li> <li>• Section 431 CTA 2009</li> <li>• Sections 118, 119, 120 and 123 TIOPA 2010</li> </ul> 2. Transfer of Assets <ul style="list-style-type: none"> <li>• Section 140C TCGA 1992</li> <li>• Section 421 CTA 2009</li> <li>• Sections 116, 117 and 123 TIOPA 2010</li> </ul>

		<p>3. Partial Divisions</p> <ul style="list-style-type: none"> <li>• Section 140C TCGA 1992</li> <li>• Held over gains: Sections 140(6AA), 154(2D) and 179(1AA) TCGA 1992</li> <li>• Sections 116, 117 and 123 TIOPA 2010</li> </ul> <p>4. Definitions</p> <ul style="list-style-type: none"> <li>• Section 140L TCGA 1992</li> </ul>
<p>Article 11</p>	<p>Special case of transparent entities. Exercise of right to disapply provisions</p>	<p>1. Share Exchange</p> <ul style="list-style-type: none"> <li>• Section 140H TCGA 1992</li> </ul> <p>2. Mergers</p> <ul style="list-style-type: none"> <li>• Section 140J TCGA 1992</li> <li>• Sections 431, 438, 682, 687 and 822 CTA 2009</li> <li>• Sections 120 and 121 TIOPA 2010</li> </ul> <p>3. Transfer of Assets</p> <ul style="list-style-type: none"> <li>• Section 140I TCGA 1992</li> <li>• Sections 421, 429, 674, 680 and 820 CTA 2009</li> <li>• Sections 120 and 121 TIOPA 2010</li> </ul> <p>4. Partial Divisions</p> <ul style="list-style-type: none"> <li>• Section 140I TCGA 1992</li> <li>• Sections 421, 429, 674, 680 and 820 CTA 2009</li> <li>• Sections 120 and 121 TIOPA 2010</li> </ul> <p>5. Double taxation provisions</p> <ul style="list-style-type: none"> <li>• Section 140K TCGA 1992</li> </ul> <p>6. Definitions</p> <ul style="list-style-type: none"> <li>• Section 140L TCGA 1992</li> <li>• Sections 339, 421, 429, 430, 438, 439, 674, 680, 681, 687, 688, 819, 820, and 823 CTA 2009</li> <li>• Sections 116, 118, 119, 120 and 123 TIOPA 2010</li> </ul>

Articles 12,13 and 14	Transfer of registered office of SE and SCE	<ul style="list-style-type: none"> <li>• Sections 16 and 17 CTA 2009</li> <li>• Section 109A TMA 1970</li> <li>• Section 286A TCGA 1992</li> <li>• Section 835A ITA 2007</li> </ul>
Article 15	Anti Avoidance measures	<ul style="list-style-type: none"> <li>• Section 140B TCGA 1992</li> <li>• Section 140D TCGA 1992</li> <li>• Section 426, 427, 429, 437, 677, 678, 679, 682, 683, 684, 685, 686, 819, 820, 831, 832 and 833 CTA 2009</li> <li>• Sections 116, 117 and 123 TIOPA 2010</li> </ul>