

Chapter 1: European cross-border transfers of business

Overview

1. This Chapter gives the rules that apply for derivative contracts in the case of cross-border transfers within the European Community of business carried on in the United Kingdom. This Chapter and the next are expected to be inserted after Chapter 5 (continuity of treatment: groups) of Part 8 of the Bill.

Clause 1 : Introduction to Chapter

2. This clause sets out the two conditions required for the Chapter to apply together with the claim requirement. It is based on paragraphs 30D(1) to (4), 30G(1) and 30I(1) of Schedule 26 to FA 2002.

3. *Subsection (2)(c)* rewrites paragraph 30D(1)(d) – that the transferee is resident in the United Kingdom or within the corporation tax charge in section 11 of ICTA – as “within the charge to corporation tax” since the result is the same.

Clause 2: Transfer of derivative contract at notional carrying value

4. This clause provides the rule that where either of the conditions in clause 1 applies, debits and credits in respect of derivative contracts which are transferred as part of the business transfer are brought into account by both transferor and transferee as if the contracts had been transferred at the carrying value in the accounts of the transferor. It is based on paragraph 30D(1), (2) and (6) of Schedule 26 to FA 2002.

5. The definition of “notional carrying value” is taken from paragraph 28(3) of Schedule 26 to FA 2002.

Clause 3: Transferor using fair value accounting

6. This clause provides the rule to apply in place of clause 2 where the transferor company uses fair value accounting. It is based on paragraph 30D(7) of Schedule 26 to FA 2002 (which applies paragraph 30 of that Schedule).

Clause 4: Tax avoidance etc

7. This clause disapplies the Chapter if the transfer of business is not effected for genuine commercial reasons, unless the Commissioners for HMRC are satisfied, following an application, that this Chapter should apply. It is based on paragraph 30F(1) to (3) of Schedule 26 to FA 2002.

8. In *subsection (1)(a)* in accordance with Tax Law Rewrite practice “bona fide commercial reasons” is rewritten as “genuine commercial reasons”.

9. *Subsection (3)* applies with modifications the clearance procedure rules governing the equivalent loan relationships provision (see clauses 19 and 20 in the draft clauses published at the same time as these clauses).

Clause 5: Disapplication of Chapter where transparent entities involved

10. This clause disapplies the Chapter under certain circumstances where transparent entities are involved in the transfer of business. It is based on paragraphs 30G(1) and (2) and 30I(1) of Schedule 26 to FA 2002.

Clause 6: Interpretation

11. This clause defines “company” and company residence in a member State for the purposes of the Chapter. It is based on paragraph 30I of Schedule 26 to FA 2002.

Chapter 2: European cross-border mergers

Overview

12. This Chapter gives the rules that apply for derivative contracts in the case of mergers where the merging companies are resident in different member States of the European Community.

Clause 7: Introduction to Chapter

13. This clause sets out the conditions (which include the different categories of merger) under which the Chapter applies. It is based on paragraphs 30B(1) and (2) and 30H(1) of Schedule 26 to FA 2002.

14. *Subsection (5)* rewrites paragraph 30B(2)(c) – that the transferee is resident in the United Kingdom or within the corporation tax charge in section 11 of ICTA – as “within the charge to corporation tax” since the effect is the same.

Clause 8: Meaning of “the transferee” and “transferor”

15. This clause gives the meaning of the two terms for the different categories of merger set out in clause 7(2). It is based on paragraph 30B(9) of Schedule 26 to FA 2002.

Clause 9: Transfer of derivative contract at notional carrying value

16. This clause provides the rule that debits and credits in respect of derivative contracts transferred under the merger are brought into account as if the transfer had been for a consideration of an amount equal to the carrying value in the transferor company’s or companies’ accounts. It is based on paragraph 30B(3) of Schedule 26 to FA 2002.

Clause 10: Transferor using fair value accounting

17. This clause provides the rule to apply in place of clause 9 where the transferor company uses fair value accounting. It is based on paragraph 30B(4) of Schedule 26 to FA 2002 (which applies paragraph 30 of that Schedule).

Clause 11: Tax avoidance etc

18. This clause disapplies the Chapter if the merger is not effected for genuine commercial purposes unless the Commissioners for HMRC are satisfied, following an application, that the Chapter should apply. It is based on paragraph 30B(6) to (8) of Schedule 26 to FA 2002.

Clause 12: Disapplication of Chapter where transparent entities involved

19. This clause disapplies the Chapter under certain circumstances where transparent entities are involved in the merger. It is based on paragraphs 30H(1) and (2) and 30I(1) of Schedule 26 to FA 2002.

Clause 13: Interpretation

20. This clause defines some terms used in the Chapter. It is based on paragraph 30I of Schedule 26 to FA 2002.