

Draft Corporation Tax Bill

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PART 9

INTANGIBLE FIXED ASSETS

CHAPTER 1

APPLICATION OF THIS PART TO GROUPS OF COMPANIES

- 1 Certain transferees of businesses etc not treated as leaving group [j062958b]** 5
- (1) This section applies if—
- (a) the relevant asset is transferred in the course of a transfer to which section 5 or [paragraph 87 of Schedule 29 to FA 2002] applies (European cross-border transfers of business), and
 - (b) as a result of the transfer the transferee ceases to be a member of a group (“Group 1”). 10
- Origin: FA 2002 Sch.29 para.58(6).
- (2) For the purposes of section [j062958], the transferee is not treated as having left Group 1. 15
- Origin: FA 2002 Sch.29 para.58(6).
- (3) If as a result of the transfer the transferee becomes a member of another group (“Group 2”), it is treated for the purposes of section [j062958] as if Group 1 and Group 2 were the same. 20
- Origin: FA 2002 Sch.29 para.58(6).
- (4) References in this section to “the transferee” and the relevant asset” must be read in accordance with section [j062958]. 20
- Origin: Drafting.

CHAPTER 2

TRANSFER OF BUSINESS OR TRADE

Introduction

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2 Overview of Chapter [j062984o]

- (1) This Chapter contains provisions—
- (a) treating some transfers of assets as tax-neutral transfers for the purposes of this Part (see sections 3, 5, 7, 9 and 11), and

- (b) giving relief in respect of the transfer of assets to a non-UK resident company (see sections [j062986](#) to [j062986c](#)).

[Origin: Drafting.](#)

- (2) Sections 12 to 14 deal with the genuine commercial transaction requirement (which applies in some cases for the treatment mentioned in subsection (1)(a)). 5

[Origin: Drafting.](#)

- (3) For the consequences of a transfer being tax-neutral for the purposes of this Part, see section [j0629140](#).

[Origin: Drafting.](#)

Tax-neutral transfers 10

3 Company reconstruction involving transfer of business [j062984](#)

- (1) This section applies if –
- (a) a scheme of reconstruction involves the transfer of the whole or part of the business of one company (“the transferor”) to another company (“the transferee”), and 15
 - (b) the transferor receives no part of the consideration for the transfer (otherwise than by the transferee taking over the whole or part of the liabilities of the business),

but see subsections (3) to (5).

[Origin: FA 2002 Sch.29 para.84\(1\); drafting.](#) 20

- (2) If the transfer includes intangible fixed assets that –
- (a) are chargeable intangible assets in relation to the transferor immediately before the transfer, and
 - (b) are chargeable intangible assets in relation to the transferee immediately after the transfer, 25
- the transfer of those assets is tax-neutral for the purposes of this Part.

[Origin: FA 2002 Sch.29 para.84\(2\).](#)

- (3) This section does not apply if the transfer is one to which section [j062955](#) (transfers within a group) applies.

[Origin: FA 2002 Sch.29 para.84\(3\).](#) 30

- (4) This section does not apply if the transferor or the transferee is –
- (a) a qualifying society within the meaning of section 461A of ICTA (incorporated friendly societies entitled to exemption from tax), or
 - (b) a dual resident investing company within the meaning of section 404 of that Act (limitation of group relief). 35

[Origin: FA 2002 Sch.29 para.84\(4\).](#)

- (5) This section applies only if the reconstruction meets the genuine commercial transaction requirement (see section 12).

[Origin: FA 2002 Sch.29 para.84\(5\).](#)

- (6) In this section “scheme of reconstruction” – 40

- (a) in relation to shares or debentures issued on or after 17 April 2002, has the meaning given in Schedule 5AA to TCGA 1992 (meaning of “scheme of reconstruction”), and
- (b) in relation to shares issued before that date, has the same meaning as it has in section 136 of that Act in relation to such shares.

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Origin: FA 2002 Sch.29 para.84(1).

4 European cross-border transfers of business: introduction [j0629851]

- (1) Section 5 applies if—
 - (a) condition A or B is met, and
 - (b) each of the companies mentioned in subsection (2)(a) or (3)(a) makes a claim under this section,but see section 5(2) and (3).

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Origin: FA 2002 Sch.29 para.85(1), (1A); drafting.

- (2) Condition A is that—
 - (a) an EU company resident in one member State transfers the whole or part of the business carried on by it in the United Kingdom to an EU company resident in another member State, and
 - (b) the transfer is wholly in exchange for securities issued by the transferee to the transferor.

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Origin: FA 2002 Sch.29 para.85(1).

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- (3) Condition B is that—
 - (a) an EU company transfers part of its business to one or more EU companies,
 - (b) the transferor is resident in one member State,
 - (c) the part of the transferor’s business which is transferred is carried on by the transferor in the United Kingdom,
 - (d) at least one transferee is resident in a member State other than that in which the transferor is resident,
 - (e) the transferor continues to carry on a business after the transfer, and
 - (f) the transfer—
 - (i) is made in exchange for the issue of shares in or debentures of each transferee to the persons holding shares in or debentures of the transferor, or
 - (ii) is not so made only because, and only so far as, a transferee is prevented from so issuing such shares or debentures by section 658 of the Companies Act 2006 (c. 46) (general rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing such an issue.

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Origin: FA 2002 Sch.29 para.85(1A), (1B), (1C).

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- (4) For the purposes of this Chapter, a company is resident in a member State if—
 - (a) it is within a charge to tax under the law of the State as being resident for that purpose, and
 - (b) it is not regarded, for the purpose of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.

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Origin: FA 2002 Sch.29 para.85(3).

- (5) In this section and section 5 –
- (a) “company” means any entity listed as a company in the Annex to the Mergers Directive,
 - (b) “securities” includes shares, 5
 - (c) “transferee” has the same meaning as in subsection (2) or (3), and
 - (d) “the transferor” has the same meaning as in subsection (2) or (3).

Origin: FA 2002 Sch.29 paras.85(6), 85D(1); drafting.

5 Transfer of assets on European cross-border transfer of business [j062985]

- (1) If the transfer of business includes intangible fixed assets that – 10
- (a) are chargeable intangible assets in relation to the transferor immediately before the transfer, and
 - (b) are chargeable intangible assets in relation to the transferee immediately after the transfer,
- the transfer of those assets is tax-neutral for the purposes of this Part. 15

Origin: FA 2002 Sch.29 para.85(2).

- (2) This section applies only if the transfer of the trade or part meets the genuine commercial transaction requirement (see section 12).

Origin: FA 2002 Sch.29 para.85(4).

- (3) This section does not apply if the transferor is a transparent entity. 20

Origin: FA 2002 Sch.29 para.85B(1), (2).

- (4) In this section –
- “the transfer of business” means the transfer of business mentioned in section 4(2)(a) or (3)(a), and
 - “transparent entity” means an entity which is resident in a member State other than the United Kingdom and is listed as a company in the Annex to the Mergers Directive, but which does not have an ordinary share capital. 25

Origin: FA 2002 Sch.29 para.85D(1); drafting.

- (5) For the purposes of subsection (4) an entity is resident in a member State if – 30
- (a) it is within a charge to tax under the law of the State as being resident for that purpose, and
 - (b) 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. 35

Origin: FA 2002 Sch.29 para.85D(2).

6 European cross-border mergers: introduction [j062985a]

- (1) Section 7 applies if the following conditions are met in the case of any merger –
- (a) conditions A to C,
 - (b) in the case of a merger within subsection (2)(a), (b) or (c), condition D, and 40

(c) in the case of a merger within subsection (2)(c) or (d), condition E, but see section 7(3) to (5)).

Origin: FA 2002 Sch.29 para.85A(1).

(2) Condition A is that—

- (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) No. 2157/2001 on the Statute for a European Company (Societas Europaea), 5
- (b) an SCE is formed by the merger of two or more co-operative societies, at least one of which is a society registered under the Industrial and Provident Societies Act 1965 (c. 12), in accordance with Articles 2(1) and 19 of Council Regulation (EC) No. 1435/2003 on the Statute for a European Cooperative Society (SCE), 10
- (c) a merger is effected by the transfer by one or more companies of all their assets and liabilities to a single existing company, or
- (d) a 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. 15

Origin: FA 2002 Sch.29 para.85A(1).

(3) Condition B is that each merging company is resident in a member State. 20

Origin: FA 2002 Sch.29 para.85A(2).

(4) Condition C is that the merging companies are not all resident in the same State.

Origin: FA 2002 Sch.29 para.85A(2).

(5) Condition D is that— 25

- (a) the transfer of assets and liabilities to the transferee in the course of the merger is made in exchange for the issue of shares or debentures by the transferee to each person holding shares in or debentures of a transferor, or
- (b) that transfer of those assets and liabilities is not so made only because, and only so far as, a transferee is prevented from so issuing such shares or debentures by section 658 of the Companies Act 2006 (c. 46) (general rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing such an issue. 30 35

Origin: FA 2002 Sch.29 para.85A(2).

(6) Condition E is that in the course of the merger each transferor ceases to exist without being in liquidation (within the meaning given by section 247 of the Insolvency Act 1986 (c. 45)).

Origin: FA 2002 Sch.29 para.85A(2). 40

(7) For the meaning of expressions used in this section, see section 8.

Origin: Drafting.

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- 7 Transfer of assets on European cross-border merger [j062985ab]**
- (1) If this section applies, the transfer of qualifying assets in the course of the merger is tax-neutral for the purposes of this Part.
Origin: FA 2002 Sch.29 para.85A(3), (4).
- (2) For the purposes of this section an asset is a qualifying asset if— 5
 (a) it is a chargeable intangible asset in relation to the transferor immediately before the transfer, and
 (b) it is a chargeable intangible asset in relation to the transferee immediately after the transfer.
Origin: FA 2002 Sch.29 para.85A(4). 10
- (3) This section does not apply if section 3 (company reconstruction involving transfer of business) applies to any qualifying assets transferred in the course of the merger.
Origin: FA 2002 Sch.29 para.85A(2).
- (4) This section does not apply if— 15
 (a) one or more of the merging companies is a transparent entity, and
 (b) the assets and liabilities of a transparent entity are transferred to another company in the course of the merger.
Origin: FA 2002 Sch.29 para.85C(1), (2).
- (5) This section applies only if the merger meets the genuine commercial transaction requirement (see section 12). 20
Origin: FA 2002 Sch.29 para.85A(7).
- (6) For the meaning of expressions used in this section, see section 8.
Origin: Drafting.
- 8 Interpretation of sections 6 and 7 [j062985ac]** 25
- (1) This section applies for the interpretation of sections 6 and 7 and this section.
Origin: Drafting.
- (2) “Transferor” means— 30
 (a) in relation to a merger within section 6(2)(a), a company merging to form the SE,
 (b) in relation to a merger within section 6(2)(b), a co-operative society merging to form the SCE, and
 (c) in relation to a merger within section 6(2)(c) or (d), each company transferring all its assets and liabilities.
Origin: FA 2002 Sch.29 para.85A(5). 35
- (3) “Transferee” means— 40
 (a) in relation to a merger within section 6(2)(a), the SE,
 (b) in relation to a merger within section 6(2)(b), the SCE, and
 (c) in relation to a merger within section 6(2)(c) or (d), the company to which assets and liabilities are transferred.

Origin: FA 2002 Sch.29 para.85A(5).

- (4) “Transparent entity” has the meaning given in section 5(4).

Origin: FA 2002 Sch.29 para.85D(1).

- (5) References to a company are references to any entity listed as a company in the Annex to the Mergers Directive. 5

Origin: FA 2002 Sch.29 para.85D(1); drafting.

- (6) In section 6 and this section “co-operative society” means a society registered under the Industrial and Provident Societies Act 1965 (c. 12) or a similar society governed by the law of a member State other than the United Kingdom.

Origin: FA 2002 Sch.29 para.85A(5). 10

9 Transfer of business of building society to company [j062990]

- (1) This section applies if –

- (a) there is a transfer of the whole of a building society’s business to a company (“the successor company”) in accordance with section 97 and the other applicable provisions of the Building Societies Act 1986 (c. 53), 15
- (b) the transfer includes intangible fixed assets,
- (c) those assets are chargeable intangible assets in relation to the society immediately before the transfer, and
- (d) those assets are chargeable intangible assets in relation to the successor company immediately after the transfer. 20

Origin: FA 2002 Sch.29 para.90(1).

- (2) The transfer of those assets is tax-neutral for the purposes of this Part.

Origin: FA 2002 Sch.29 para.90(1).

- (3) For the application of sections [j062958] and [j062960] in cases where this section applies, see section 10. 25

Origin: Drafting.

- (4) In that section “the successor company” has the same meaning as in this section.

Origin: Drafting.

10 Application of sections [j062958] and [j062960] where transfer within section 9 occurs [j062990a] 30

- (1) This section deals with the application of –

- (a) section [j062958] (company ceasing to be member of group (“degroupping”): general), and 35
- (b) section [j062960] (principal company becoming member of another group: general),

where there is a transfer within section 9.

Origin: Drafting.

- (2) If, because of the transfer, a company ceases to be a member of the same group as the building society, that event does not cause section [j062958] or [j062960] 40

to apply as respects any asset acquired by the company from the building society or any other member of the same group.

[Origin: FA 2002 Sch.29 para.90\(2\).](#)

- (3) If the building society and the successor company are members of the same group at the time of the transfer but later cease to be, that later event does not cause section [\[j062958\]](#) or [\[j062960\]](#) to apply to any asset to which this subsection applies. 5

[Origin: FA 2002 Sch.29 para.90\(3\).](#)

- (4) Subsection (3) applies to— 10
- (a) any asset acquired by the successor company on or before the transfer from the building society or any other member of that same group, or
 - (b) any asset acquired from the building society or any other member of that group by a company other than the successor company that is a member of that group at the time of the transfer.

[Origin: FA 2002 Sch.29 para.90\(3\).](#) 15

- (5) Subsection (6) applies if a company which is a member of the same group as the building society at the time of the transfer— 20
- (a) ceases to be a member of that group and becomes a member of the same group as the successor company, and
 - (b) later ceases to be a member of that group.

[Origin: FA 2002 Sch.29 para.90\(4\).](#)

- (6) Section [\[j062958\]](#) applies on that later event as if any asset to which this subsection applies that has not been acquired from the successor company had been so acquired.

[Origin: FA 2002 Sch.29 para.90\(4\).](#) 25

- (7) Subsection (6) applies to— 30
- (a) any asset acquired by the company from the building society when the company and the building society were members of the same group, or
 - (b) any asset acquired by the company from another company which is a member of the same group at the time of the transfer, when the company, the building society and the other company, were members of the same group.

[Origin: FA 2002 Sch.29 para.90\(5\).](#)

- (8) Subsection (6) does not apply if— 35
- (a) the company which acquired the asset is a 75% subsidiary of the company from which it was acquired, or vice versa,
 - (b) those companies cease simultaneously to be members of the same group as the successor company, and
 - (c) those companies continue to be members of the same group as one another. 40

[Origin: FA 2002 Sch.29 para.90\(6\).](#)

11 Amalgamation of, or transfer of engagements by, certain societies [\[j062991\]](#)

- (1) This section applies if—

- (a) two or more societies to which this section applies amalgamate or there is a transfer of engagements from one such society to another,
- (b) in the course of the amalgamation or transfer of engagements or as part of it intangible fixed assets are transferred from one society (“the transferor”) to another (“the transferee”), 5
- (c) those assets are chargeable intangible assets in relation to the transferor immediately before the transfer, and
- (d) those assets are chargeable intangible assets in relation to the transferee immediately after the transfer.

Origin: FA 2002 Sch.29 para.91(1). 10

- (2) The transfer of those assets is tax-neutral for the purposes of this Part.

Origin: FA 2002 Sch.29 para.91(1).

- (3) This section applies to –
- (a) a building society,
 - (b) a registered industrial and provident society, and 15
 - (c) a co-operative association in relation to which section 486(1) and (8) of ICTA has effect as it has effect in relation to a registered industrial and provident society.

Origin: FA 2002 Sch.29 para.91(2).

Genuine commercial transaction requirements and clearances 20

12 The genuine commercial transaction requirement [j062988b]

- (1) For the purposes of this Chapter, a reconstruction, transfer or merger meets the genuine commercial transaction requirement if it –
- (a) is effected for genuine 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 avoidance of liability to corporation tax, capital gains tax or income tax. 25

Origin: FA 2002 Sch.29 paras.84(5), 85(4), 85A(7), 86(8).

- (2) The requirements of subsection (1) are treated as met if before the reconstruction, transfer or merger – 30
- (a) the appropriate applicant has applied to the Commissioners for Her Majesty’s Revenue and Customs, and
 - (b) the Commissioners have notified the appropriate applicant that they are satisfied that the requirements of subsection (1) will be met.

Origin: FA 2002 Sch.29 paras.84(6), 85(5), 85A(8), 86(9), 141(1), (2), (3). 35

- (3) In subsection (2) “the appropriate applicant” means –
- (a) in the case of an application about a reconstruction within section 3(1)(a), the transferee (within the meaning of that section),
 - (b) in the case of an application about a transfer falling within section 5 because condition A in section 4(2) is met, the transferor and the transferee (within the meaning of section 4(2)), 40

- (c) in the case of an application about a transfer falling within section 5 because condition B in section 4(3) is met, the transferor and the transferee (within the meaning of section 4(3)),
- (d) in the case of an application about a merger falling within section 6(2), the transferor (as defined in section 8(2)), and
- (e) in the case of an application about a transfer falling within section [\[j062986\]](#)(1)(a), the transferor (within the meaning of that section).

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[Origin: FA 2002 Sch.29 paras.84\(6\), 85\(5\), 85A\(8\), 86\(9\).](#)

- (4) For the procedure on such an application, see section 13.

[Origin: FA 2002 Sch.29 paras.84\(6\), 85\(5\), 85A\(9\), 86\(9\).](#)

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13 Procedure on application for clearance [\[j062988\]](#)

- (1) This section applies in relation to an application under section 12(2).

[Origin: FA 2002 Sch.29 paras.84\(6\), 85\(5\), 85A\(9\), 86\(9\), 88\(1\).](#)

- (2) The application must be in writing and must contain particulars of the operations that are to be effected.

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[Origin: FA 2002 Sch.29 paras.84\(6\), 85\(5\), 85A\(9\), 86\(9\), 88\(2\).](#)

- (3) The Commissioners for Her Majesty's Revenue and Customs may by notice require the applicant to provide further particulars for the purpose of enabling them to make their decision.

[Origin: FA 2002 Sch.29 paras.88\(3\), 84\(6\), 85\(5\), 85A\(9\), 86\(9\), 88\(3\), 141\(1\), \(2\), \(3\).](#)

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- (4) Such a notice may only be given within 30 days of the receipt of the application or of any further particulars previously required under subsection (3).

[Origin: FA 2002 Sch.29 paras.84\(6\), 85\(5\), 85A\(9\), 86\(9\), 88\(3\).](#)

- (5) If such a notice is not complied with within 30 days or such longer period as the Commissioners for Her Majesty's Revenue and Customs may allow, they need not proceed further on the application.

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[Origin: FA 2002 Sch.29 paras.84\(6\), 85\(5\), 85A\(9\), 86\(9\), 88\(3\), 141\(1\), \(2\), \(3\).](#)

14 Decision on application for clearance [\[j062988a\]](#)

- (1) The Commissioners for Her Majesty's Revenue and Customs must notify their decision on an application under section 12(2) to the applicant –

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- (a) within 30 days of receiving the application, or
- (b) if they give a notice under section 13(3), within 30 days of the notice being complied with.

[Origin: FA 2002 Sch.29 paras.84\(6\), 85\(5\), 85A\(8\), 86\(9\), 88\(4\), 141\(1\), \(2\), \(3\).](#)

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- (2) If the Commissioners for Her Majesty's Revenue and Customs –

- (a) notify the applicant that they are not satisfied that the requirements of section 12(1) will be met, or
- (b) do not notify their decision to the applicant within the time required by subsection (1),

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the applicant may within 30 days of the notification or of that time require them to transmit the application to the Special Commissioners, together with any notice given and further particulars provided under section 13(3).

Origin: FA 2002 Sch.29 paras.84(6), 85(5), 85A(8), 86(9), 88(5).

- (3) In that case any notification by the Special Commissioners has effect for the purposes of section 12(2)(b) as if it were a notification by the Commissioners for Her Majesty's Revenue and Customs. 5

Origin: FA 2002 Sch.29 paras.84(6), 85(5), 85A(8), 86(9), 88(5).

- (4) If any particulars provided under section 13 do not fully and accurately disclose all facts and considerations material for the decision – 10

(a) of the Commissioners for Her Majesty's Revenue and Customs, or

(b) of the Special Commissioners,

any resulting notification by the Commissioners for Her Majesty's Revenue and Customs or the Special Commissioners is void.

Origin: FA 2002 Sch.29 paras.84(6), 85(5), 85A(8), 86(9), 88(6). 15