

**Chapter 1: Application of this Part to groups of companies**

1. Chapter 9 of Part 9 of the draft Bill published for consultation in February 2008 sets out the special rules that apply to companies that are “grouped” under the rules in Chapter 8 of that draft.

2. Certain of these rules are “degrouing” rules (clauses 748 to 755 of the draft Bill published in February 2008) under which there may be a deemed realisation and reacquisition of an asset if a company leaves a group following an earlier transfer to it of intangible fixed assets on a tax-neutral basis.

3. Clause 1 (shown here in Chapter 1) to be inserted in Chapter 9 of Part 9 of the Bill is a new clause which modifies the operation of the degrouing rules on certain cross-border transfers of business within the EC.

**Clause 1: Certain transferees of businesses etc not treated as leaving group**

4. This clause prevents a deemed realisation and reacquisition of an asset under the degrouing rules when a company leaves a group as a result of a transfer of business within clause 4{j0629851}. It is based on paragraph 58 of Schedule 29 to FA 2002. It is the third of three clauses that rewrite that paragraph.

**Chapter 2: Transfer of business or trade**

**Clause 2: Overview of Chapter**

5. This clause introduces the rules that allow transfers of intangible fixed assets to be made on a tax-neutral or other tax advantageous basis when they are made as part of certain transfers of businesses. It is new.

6. The purpose of these rules is to ensure continuity or consistency of treatment where those assets change hands in the course of genuine commercial business reorganisations.

7. The rewrite groups together rules with a common theme. These groupings are, in order, rules about tax-neutral transfers, rules about other reliefs and rules for anti-avoidance and clearances. The clauses shown here as Chapter 2 (to be incorporated in Chapter 11 of Part 9 of the draft Bill published for consultation in February 2008) include only the clauses in the first and third groups, “Tax-neutral transfers” and “Genuine commercial transaction requirements and clearances”.

8. *Subsection (2)* signposts provisions dealing with the “genuine commercial transaction requirement”. This requirement limits the application of the reliefs under this Chapter to cases where the transfer is not motivated by tax avoidance. In the source legislation, this limitation is repeated in each provision to which it applies. In the rewrite it is rewritten only once and applied where appropriate by reference to the “genuine commercial transaction requirement”.

***Tax-neutral transfers***

**Clause 3: Company reconstruction involving transfer of business**

9. Where there are certain transfers of a business (or part of a business) as part of a company reconstruction, this clause allows the tax-neutral transfer of intangible fixed assets. It is based on paragraph 84 of Schedule 29 to FA 2002.

10. A “tax-neutral transfer” is defined in clause 744 of the draft Bill published in February 2008. Broadly, it means that the transferee company subsequently stands in the shoes of the transferor company for tax purposes in respect of the intangible fixed assets transferred with the business.

11. *Subsection (6)* cross-refers to both Schedule 5AA to TCGA and section 136 of TCGA whereas paragraph 84(1) of Schedule 29 to FA 2002 (which subsection (6) partly rewrites) refers only to section 136 of TCGA. That is because the meaning of “scheme of reconstruction” depends on the date of issue of the relevant shares or debentures. For shares or debentures issued on or after 17 April 2002 a new section 136 of TCGA (substituted by section 45 of, and paragraphs 2 and 7 of Schedule 9 to, FA 2002) directs the reader (in sub-section (4)(a)) to a detailed definition of “scheme of reconstruction” in Schedule 5AA of TCGA. For shares or debentures issued before 17 April 2002 there is a much shorter definition of “scheme of reconstruction or amalgamation” in the version of section 136 of TCGA before the FA 2002 amendment.

**Clause 4: European cross-border transfers of business: introduction**

12. This clause defines the transfers of business in which the transfer of intangible fixed assets may be treated as tax-neutral under clause 5. It is based on paragraph 85 and 85D of Schedule 29 to FA 2002.

**Clause 5: Transfer of assets on European cross-border transfer of business**

13. This clause provides for the tax-neutral transfer of intangible fixed assets on a qualifying transfer of a UK business. It is based on paragraph 85, 85B and 85D of Schedule 29 to FA 2002.

**Clause 6: European cross-border mergers: introduction**

14. This clause defines the mergers in which the transfer of intangible fixed assets between EU companies may be treated as tax-neutral under clause 7. It is based on paragraph 85A of Schedule 29 to FA 2002.

**Clause 7: Transfer of assets on European cross-border merger**

15. This clause provides for the tax-neutral transfer of intangible fixed assets on a qualifying merger of EU companies. It is based on paragraph 85A and 85C of Schedule 29 to FA 2002.

**Clause 8: Interpretation of sections 6 and 7** This clause gives definitions and rules of interpretation. It is based on paragraph 85A and 85D of Schedule 29 to FA 2002.

**Clause 9: Transfer of business of building society to company**

17. This clause allows the tax-neutral transfer of intangible fixed assets when the business of a building society is transferred to a company. It is based on paragraph 90 of Schedule 29 to FA 2002. It is the first of two clauses that rewrite that paragraph.

**Clause 10: Application of sections 748 and 752 where transfer within section 9 occurs**

18. This clause relaxes certain degrouping rules (not shown here) in Chapter 9 of Part 9 of the draft Bill on the transfer of a building society's business to a company. It is based on paragraph 90 of Schedule 29 to FA 2002. It is the second of two clauses that rewrite that paragraph.

**Clause 11: Amalgamation of, or transfer of engagements by, certain societies**

19. This clause allows the tax-neutral transfer between certain building societies of intangible fixed assets when the transfer is part of an amalgamation of the societies or when the whole or a part of the business of one society is transferred to the other ("a transfer of engagements"). It is based on paragraph 91 of Schedule 29 to FA 2002.

***Genuine commercial transaction requirements and clearances***

**Clause 12: The genuine commercial transaction requirement**

20. This clause states the genuine commercial transaction condition and provides for an advance clearance procedure in respect of it. It is based on paragraphs 84, 85, 85A, 86, 88 and 141 of Schedule 29 to FA 2002.

21. Many of the relieving provisions in Part 11 of Schedule 29 to FA 2002 are conditional on the transactions involved not having an avoidance purpose. And to provide certainty to those contemplating a transaction they provide for an advance clearance application. In the source these matters are repeated in each relieving provision to which they apply. Rather than rewrite the same condition and clearance as part of each of the clauses to which they apply, they are rewritten only once, in this clause, and applied, where appropriate, by reference, in the clauses to which they are relevant, to the "genuine commercial transaction requirement".

22. *Subsection (3)* defines the "appropriate applicant" referred to in *subsection (2)*. The source legislation defines in each relevant paragraph who should make the clearance application. Rewriting the clearance rule only once (as described in the previous paragraph) necessitates identification of the appropriate applicant depending on the transaction in respect of which the application is to be made.

23. This clause is the first of three clauses that provide for the genuine commercial transaction exception and the related clearance procedure.

**Clause 13: Procedure on application for clearance**

24. This clause deals with procedural matters in respect of the clearance application under the previous clause. It is based on paragraph 88 of Schedule 29 to FA 2002. It is the first of two clauses that rewrite that paragraph.

25. Paragraph 88 of Schedule 29 to FA 2002 deals with two distinct matters in relation to a clearance: the application procedure and the outcome of the application. The paragraph is rewritten in two clauses to reflect that distinction.

**Clause 14: Decision on application for clearance**

26. This clause deals with the outcome of a clearance application under clause 12. It is based on paragraph 88 of Schedule 29 to FA 2002. It is the second of the two clauses that rewrite that paragraph.