

Draft Corporation Tax Bill

CONTENTS

PART 6

LOAN RELATIONSHIPS

CHAPTER 1

CONTINUITY ON TRANSFERS WITHIN GROUPS OR ON REORGANISATIONS

Application of this Chapter

- 1 Introduction to Chapter [j06969121]
- 2 Transfers of loans on group transactions [j0696912e]
- 3 Transfers of loans on insurance business transfers [j061099a]
- 4 Meaning of companies replacing each other as parties to loan relationships [j0696912c]
- 5 Issues of new securities on reorganisations [j0696912z]

Continuity of treatment: transfer of loan at notional carrying value

- 6 Group transfers and transfers of insurance business: transfer of loan relationship at notional carrying value [j0696912]
- 7 Transferor using fair value accounting [j0696912A]
- 8 Issues of new securities on reorganisations: disposal at notional carrying value [j0696912m]
- 9 Receiving company using fair value accounting [j696912G4]

Transferee leaving group after replacing transferor

- 10 Transferee leaving group after replacing transferor as party to loan relationship: introduction [j0696912Aa]
- 11 Replacement of transferee otherwise than because of exempt distribution [j0696912Aba]
- 12 Replacement of transferee because of exempt distribution [j0696912Ab]

CHAPTER 2

EUROPEAN CROSS-BORDER TRANSFERS OF BUSINESS

Introduction

- 13 Introduction to Chapter [j6ml12d1]

Transfers of loan relationships at notional carrying value

- 14 Transfer of loan relationship at notional carrying value [j6ml12D2]
15 Transferor using fair value accounting [j6ml12d3]
16 Reorganisations involving loan relationships [j696912G1b]
17 Original holder using fair value accounting [j696912G4b]

Exception for tax avoidance cases and clearances

- 18 Tax avoidance etc [j6ml12F1]
19 Procedure on application for clearance [j6ml12B7]
20 Decision on application for clearance [j6ml12B8]

Transparent entities

- 21 Disapplication of Chapter where transparent entities involved [j6ml12H1]

Interpretation

- 22 Interpretation [j6ml12j2]

CHAPTER 3

EUROPEAN CROSS-BORDER MERGERS

Introduction

- 23 Introduction to Chapter [j6ml12B1]
24 Meaning of “the transferee” and “transferor” [j6ml12B2]

Transfers of loan relationships at notional carrying value

- 25 Transfer of loan relationship at notional carrying value [j6ml12B3]
26 Transferor using fair value accounting [j6ml12B4]
27 Reorganisations involving loan relationships [j696912G1A]
28 Original holder using fair value accounting [j696912G4a]

Exception for tax avoidance cases and clearances

- 29 Tax avoidance etc [j6ml12B5]

Transparent entities

- 30 Disapplication of Chapter where transparent entities involved [j6ml12i1]

Interpretation

31 Interpretation [j6ml12j1]

PART 6

LOAN RELATIONSHIPS

CHAPTER 1

CONTINUITY ON TRANSFERS WITHIN GROUPS OR ON REORGANISATIONS

Application of this Chapter 5

1 Introduction to Chapter [j06969121]

- (1) This Chapter applies in the cases mentioned in—
- (a) section 2 (transfers of loans on group transactions),
 - (b) section 3 (transfers of loans on insurance business transfers), and
 - (c) section 5 (issues of new securities on reorganisations). 10

Origin: FA 1996 Sch.9 paras.12(1), 12G(1), (4); drafting.

- (2) The following sections make provision about how the credits and debits to be brought into account under this Part in those cases are determined—
- (a) sections 6 and 7 (which apply in the cases mentioned in sections 2 and 3), and 15
 - (b) sections 8 and 9 (which apply in the case mentioned in section 5).

Origin: FA 1996 Sch.9 para.12(1).

- (3) Sections 10 to 12 provide for the treatment of a loan relationship in respect of which section 2 has applied where the company replacing another as a party to a loan relationship later leaves the group of companies of which they were members. 20

Origin: Drafting.

- (4) For the meaning of references in this Chapter to a company replacing another as a party to a loan relationship, see section 4.

Origin: Drafting. 25

- (5) In this Chapter references to a company being a member of a group of companies need to be read in accordance with section 170 of TCGA 1992.

Origin: FA 1996 Sch.9 para.12(8).

2 Transfers of loans on group transactions [j0696912e]

- (1) The case referred to in section 1(1)(a) is where— 30

- (a) such a transaction as is specified in subsection (2) or such a series of transactions as is specified in subsection (3) occurs, and
- (b) as a result one of the companies involved (“the transferee”) directly or indirectly replaces the other (“the transferor”) as a party to a loan relationship.

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Origin: FA 1996 Sch.9 para.12(1).

- (2) The transaction referred to in subsection (1) is a related transaction between two companies which are –
 - (a) members of the same group, and
 - (b) within the charge to corporation tax in respect of that transaction.

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Origin: FA 1996 Sch.9 para.12(1).

- (3) The series of transactions referred to in subsection (1) is a series of transactions having the same effect as a related transaction between two companies each of which –
 - (a) has been a member of the same group at any time in the course of that series of transactions, and
 - (b) would be within the charge to corporation tax in respect of the related transaction.

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Origin: FA 1996 Sch.9 para.12(1).

- (4) This Chapter does not apply as a result of this section in relation to –
 - (a) a transfer of an asset, or
 - (b) a transfer of rights under, or an interest in, an asset,
 as a result of such a transaction as is referred to in subsection (2) or such a series of transactions as are referred to in subsection (3) if immediately before or after the transfer the asset is within one of the categories set out in section 440(4)(a), (d) and (e) of ICTA (insurance assets deemed to have been transferred for a consideration equal to their fair value).

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Origin: FA 1996 Sch. 9 para.12(3).

- (5) In this Chapter, in relation to a case within subsection (1), “the transferee” and “the transferor” have the same meaning as in that subsection.

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Origin: FA 1996 Sch.9 para.12(1); drafting.

3 Transfers of loans on insurance business transfers [j061099a]

- (1) The case referred to in section 1(1)(b) is where –
 - (a) a transfer between two companies occurs to which this section applies, and
 - (b) as a result one of the companies (“the transferee”) directly or indirectly replaces the other (“the transferor”) as a party to a loan relationship.

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Origin: FA 1996 Sch.9 para.12(1).

- (2) This section applies to the transfers specified in subsection (3), so far as they are not excluded by subsection (4).

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Origin: FA 1996 Sch. 9 para.12(1), (4); drafting.

- (3) They are –

- (a) a transfer between two companies of business consisting of the effecting or carrying out of contracts of long-term insurance which has effect under an insurance business transfer scheme, and
- (b) any transfer between two companies which is a qualifying overseas transfer.

5

Origin: FA 1996 Sch. 9 para.12(1).

- (4) Subsection (3) does not apply to a transfer of an asset or of rights under or an interest in an asset if –
 - (a) immediately before the transfer the asset is within one of the categories set out in section 440(4) of ICTA (transfers of assets etc), and
 - (b) immediately after the transfer it is not.

10

Origin: FA 1996 Sch. 9 para.12(4).

- (5) In a case where one of the companies mentioned in subsection (3) is an overseas life insurance company, an asset is treated for the purposes of subsection (4) as being in the same category both before and after the transfer if –
 - (a) immediately before it the asset is in one category, and
 - (b) immediately after it the asset is within the corresponding category.

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Origin: FA 1996 Sch. 9 para.12(5).

- (6) In this Chapter, in relation to a case within subsection (1), “the transferee” and “the transferor” have the same meaning as in that subsection.

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Origin: FA 1996 Sch.9 para.12(1); drafting.

4 **Meaning of companies replacing each other as parties to loan relationships** **[j0696912c]**

- (1) References in this Chapter to one company (“A”) replacing another company (“B”) as a party to a loan relationship include references to A becoming a party to a loan relationship under which its rights or, as the case may be, its obligations, are equivalent to those of B under a loan relationship to which B has previously ceased to be a party.

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Origin: FA 1996 Sch.9 para.12(6).

- (2) For the purposes of subsection (1), A’s rights under a creditor relationship are equivalent to rights under another creditor relationship if each set of rights gives the holder of an asset representing the relationship in question –
 - (a) the same rights against the same persons as to capital, interest and dividends, and
 - (b) the same remedies to enforce those rights.

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Origin: FA 1996 Sch.9 para.12(7).

- (3) For the purposes of subsection (2), any difference in –
 - (a) the total nominal amounts of the assets representing each relationship,
 - (b) the form in which they are held, or
 - (c) the manner in which they can be transferred,is ignored.

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Origin: FA 1996 Sch.9 para.12(7).

- (4) For the purposes of subsection (1), A's obligations under a debtor relationship are equivalent to obligations under another debtor relationship if each set of obligations subjects the holder of the liability representing the relationship in question to –
- (a) the same obligations to the same persons as to capital, interest and dividends, and
 - (b) the same remedies to enforce those obligations.

Origin: FA 1996 Sch.9 para.12(7A).

- (5) For the purposes of subsection (4), any difference in –
- (a) the total nominal amounts of the assets representing the creditor relationship corresponding to each relationship,
 - (b) the form in which those assets are held, or
 - (c) the manner in which they can be transferred,
- is ignored.

Origin: FA 1996 Sch.9 para.12(7A).

5 Issues of new securities on reorganisations [j0696912z]

- (1) The case referred to in section 1(1)(c) is where conditions A to D are met.
- Origin: FA 1996 Sch.9 para.12G(1), (3).
- (2) Condition A is that sections 127 to 130 of TCGA 1992 (reorganisations: equation of original shares and new holding) –
- (a) apply in relation to an exchange as a result of section 135(3) of that Act (which provides for sections 127 to 130 to apply to an exchange of securities for those in another company as if it were a reorganisation), or
 - (b) would so apply but for section 116(5) of that Act (which disapplies sections 127 to 130 where the original shares or the new holding consists of or includes a qualifying corporate bond).

Origin: FA 1996 Sch.9 para.12G(1), (3).

- (3) Condition B is that the original shares consist of or include an asset representing a loan relationship.

Origin: FA 1996 Sch.9 para.12G(1).

- (4) Condition C is that company A is resident in one member State and company B is resident in another member State.

Origin: FA 1996 Sch.9 para.12G(3).

- (5) For this purpose 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.

Origin: FA 1996 Sch.9 para.12J(2).

- (6) Condition D is that neither Chapter 2 (European cross-border transfers of business) nor Chapter 3 (European cross-border mergers) applies in relation to the exchange.

Origin: FA 1996 Sch.9 para.12G(1), (2); drafting.

- (7) In this section – 5
- (a) “company A” and “company B” have the same meaning as in section 135 of TCGA 1992,
 - (b) “original shares” has the same meaning as it has for the purposes of sections 126 to 131 of that Act, as applied by section 135 of that Act, and
 - (c) “receiving company” means the company to which the issue of shares in or debentures of company B mentioned in section 135(1) of that Act is made. 10

Origin: FA 1996 Sch.9 para.12G(6); drafting.

- (8) If company B is a company to which section 135(5) of TCGA 1992 applies (companies with no share capital), the reference in subsection (7)(c) to the shares in or debentures of company B includes a reference to any interests in the company possessed by its members. 15

Origin: Drafting.

Continuity of treatment: transfer of loan at notional carrying value

6 Group transfers and transfers of insurance business: transfer of loan relationship at notional carrying value [j0696912] 20

- (1) This section applies in the cases mentioned in –
- (a) section 2 (transfers of loans on group transactions), and
 - (b) section 3 (transfers of loans on insurance business transfers).

Origin: FA 1996 Sch.9 para.12G(1), (3). 25

- (2) For the purposes of this Part the credits and debits that are to be brought into account in respect of the loan relationship referred to in section 2(1)(b) or section 3(1)(b) are determined in accordance with subsections (3) to (5).

Origin: FA 1996 Sch.9 para.12(2).

- (3) For the accounting period in which the transaction or, as the case may be, the first of the transactions takes place, the transferor is treated as having entered into that transaction for a consideration equal to the notional carrying value of the asset or liability representing the relationship (see subsection (6)). 30

Origin: FA 1996 Sch.9 para.12(2).

- (4) For any accounting period in which the transferee is a party to the relationship, it is treated as if it had acquired the asset or liability representing the relationship for a consideration equal to its notional carrying value. 35

Origin: FA 1996 Sch.9 para.12(2).

- (5) If a discount arises in respect of the transaction or series of transactions, the consideration must be increased for the purposes of subsection (3) (but not subsection (4)) by the amount of the discount. 40

Origin: FA 1996 Sch.9 para.12(2C).

- (6) For the purposes of this section –
- (a) “carrying value” has the same meaning as it has for the purposes of section {j0696919aa} (see section {j0696919ad}(2) and (4)),
 - (b) section {j0610100ab}(5) (when discount arises) applies as it applies for the purposes of section {j0610100ab}, and 5
 - (c) “notional carrying value”, in relation to an asset or liability, means the amount that would have been its carrying value in the accounts of the transferor if a period of account had ended immediately before the date when the transferor ceased to be party to the loan relationship. 10

Origin: FA 1996 Sch.9 para.12(2), (2C), (9); drafting.

- (7) Schedule 28AA to ICTA (provision not at arm’s length) does not apply in relation to the amounts in respect of which credits or debits are to be brought into account under this section.

Origin: FA 1996 Sch.9 para.12(2ZA). 15

- (8) This section is subject to section 7 (transferor using fair value accounting).

Origin: FA 1996 Sch.9 para.12(2A).

7 Transferor using fair value accounting [j0696912A]

- (1) This section applies instead of section 6 if, in a case where that section would otherwise apply, the transferor is regarded for the purposes of this section as using fair value accounting in respect of the loan relationship (see subsection (5)). 20

Origin: FA 1996 Sch.9 para.12(2A).

- (2) The amount that is to be brought into account by the transferor in respect of the transaction or the series of transactions referred to in section 6(3) (“the transferor’s amount”) is – 25
- (a) if an asset is to be brought into account, its fair value as at the date when the transferee becomes party to the loan relationship, or the fair value of the rights under or interest in it as at that date, and
 - (b) if a liability is to be brought into account, its fair value as at that date. 30

Origin: FA 1996 Sch.9 para.12(2A).

- (3) For any accounting period in which the transferee is party to the loan relationship, for the purpose of determining the credits and debits to be brought into account in respect of it for the purposes of this Part, the transferee is treated as if it had acquired the asset or liability representing the relationship for a consideration equal to the transferor’s amount. 35

Origin: FA 1996 Sch.9 para.12(2A).

- (4) If a discount arises in respect of the transaction or series of transactions, the transferor’s amount must be increased for the purposes of subsection (2) (but not subsection (3)) by the amount of the discount. 40

Origin: FA 1996 Sch.9 para.12(2A), (2C).

- (5) The transferor is regarded for the purposes of this section as using fair value accounting in respect of the loan relationship only if the credits and debits to

be brought into account for the purposes of this Part as respects the relationship are determined on that basis.

Origin: FA 1996 Sch.9 para.12(2B).

- (6) It does not matter for the purposes of subsection (5) if the transferor does not otherwise use fair value accounting in respect of the loan relationship. 5

Origin: FA 1996 Sch.9 para.12(2B).

- (7) For the purposes of this section, section {j0610100ab}(5) (when discount arises) applies as it applies for the purposes of section {j0610100ab}.

Origin: FA 1996 Sch.9 para.12(2C); drafting.

8 Issues of new securities on reorganisations: disposal at notional carrying value [j0696912m] 10

- (1) This section applies in the case mentioned in section 5.

Origin: FA 1996 Sch.9 para.12G(1), (3).

- (2) For the purposes of this Part such debits and credits are to be brought into account as would be brought into account if the exchange were a disposal of the asset representing the loan relationship referred to in section 5(3) at a consideration equal to its notional carrying value. 15

Origin: FA 1996 Sch.9 para.12G(4).

- (3) For the purposes of this section, the notional carrying value of that asset is the amount that would have been its carrying value in the accounts of the receiving company if a period of account had ended immediately before the date when the exchange occurred. 20

Origin: FA 1996 Sch.9 para.12G(4); drafting.

- (4) In this section—
“carrying value” has the same meaning as it has for the purposes of section {j0696919aa} (see section {j0696919ad}(2) and (4)), and
“receiving company” has the meaning given in section 5(7). 25

Origin: FA 1996 Sch.9 para.12G(4); drafting.

- (5) This section is subject to section 9 (receiving company using fair value accounting). 30

Origin: FA 1996 Sch.9 para.12G(5).

9 Receiving company using fair value accounting [j696912G4]

- (1) This section applies instead of section 8 if, in a case where that section would otherwise apply, the receiving company is regarded for the purposes of this section as using fair value accounting in respect of the loan relationship constituting or included in the original shares. 35

Origin: FA 1996 Sch.9 para.12G(5); drafting.

- (2) The amount that is to be brought into account by the receiving company in respect of the exchange (“the disposal amount”) is—

- (a) the fair value of the asset representing the loan relationship as at the date when the exchange occurred, or
- (b) the fair value of the rights under or interest in that asset as at that date.

Origin: FA 1996 Sch.9 para.12G(5); drafting.

- (3) For any accounting period in which company B is a party to the loan relationship, for the purpose of determining the credits and debits to be brought into account in respect of it for the purposes of this Part, company B is treated as if it had acquired the asset representing the relationship for a consideration equal to the disposal amount. 5

Origin: FA 1996 Sch.9 para.12G(5); drafting. 10

- (4) Subsections (5) and (6) of section 7 apply for the purposes of this section as they apply for the purpose of that section, taking references in that section to the transferor as references to the receiving company.

Origin: FA 1996 Sch.9 para.12G(5); drafting.

- (5) In this section “original shares” and “receiving company” have the meaning given in section 5(7). 15

Origin: Drafting.

Transferee leaving group after replacing transferor

10 Transferee leaving group after replacing transferor as party to loan relationship: introduction [j0696912Aa] 20

- (1) Sections 11 and 12 apply if—
 - (a) this Chapter applies in the case mentioned in section 2 (transfers of loans on group transactions), and
 - (b) before the end of the relevant 6 year period and whilst still a party to the relevant loan relationship, the transferee ceases to be a member of the relevant group. 25

Origin: FA 1996 Sch.9 para.12A(1), (5).

- (2) But the transferee is not to be treated for the purposes of this section and sections 11 and 12 as having left the relevant group if—
 - (a) an asset or liability which represents a loan relationship is transferred in the course of a transfer or merger in relation to which Chapter 2 (European cross-border transfers of business) or Chapter 3 (European cross-border mergers) applies, and 30
 - (b) the transferee ceases to be a member of the relevant group in consequence of the transfer or merger. 35

Origin: FA 1996 Sch.9 para.12A(5A).

- (3) In a case where subsection (2) applies, if the transferee becomes a member of another group in consequence of the transfer or merger, it is to be treated for the purposes of this section and sections 11 and 12 as if the relevant group and the other group were the same. 40

Origin: FA 1996 Sch.9 para.12A(5A).

- (4) In this section and sections 11 and 12—

- “the relevant 6 year period” means the period of 6 years following –
- (a) in a case where section 6 applies because of a transaction within section 2(1) (“case A”), that transaction, or
 - (b) in a case where section 6 applies because of a series of transactions within section 2(2) (“case B”), the last transaction of that series, 5
- “the relevant group” means –
- (a) in case A, the group mentioned in section 2(1), and
 - (b) in case B, the group mentioned in section 2(2), and
- “the relevant loan relationship” means the loan relationship mentioned in section 1(2)(b). 10

Origin: FA 1996 Sch.9 para.12A(8); drafting.

11 Replacement of transferee otherwise than because of exempt distribution [j0696912Aba]

- (1) This section applies if – 15
- (a) the transferee ceases to be a member of the relevant group, and
 - (b) it does not so cease just because of a distribution which is exempt as a result of –
 - (i) section 213(2) of ICTA (exempt distributions), or
 - (ii) section 213A of ICTA (exempt distributions: division of business). 20

Origin: FA 1996 Sch.9 para.12A(1), (5).

- (2) If condition A or B is met, this Part applies as if –
- (a) immediately before ceasing to be a member of the relevant group the transferee had assigned the asset or liability representing the relevant loan relationship, 25
 - (b) the assignment had been for a consideration of an amount equal to the fair value of the asset or liability at that time, and
 - (c) the transferee had immediately reacquired the asset or liability for a consideration of the same amount. 30

Origin: FA 1996 Sch.9 para.12A(2).

- (3) Condition A is that if subsection (2) applied a credit would be brought into account for the purposes of this Part by the transferee as a result of subsection (2)(a) and (b).

Origin: FA 1996 Sch.9 para.12A(3). 35

- (4) Condition B is that –
- (a) the relevant loan relationship is a creditor relationship,
 - (b) the transferee has a hedging relationship between a derivative contract and the creditor relationship (see subsection (5)), and
 - (c) as a result of section [j72630aa](2)(a) and (b) a credit must be brought into account by the transferee for the purposes of Part 8 (derivative contracts) in respect of the derivative contract. 40

Origin: FA 1996 Sch.9 para.12A(4).

- (5) Section [{j72612e}](#) (meaning of “hedging relationship”) applies for the purposes of this section.

Origin: FA 1996 Sch.9 para.12A(9).

12 Replacement of transferee because of exempt distribution [{j0696912Ab}](#)

- (1) This section applies if – 5
- (a) the transferee ceases to be a member of the relevant group just because of a distribution which is exempt as a result of –
 - (i) section 213(2) of ICTA (exempt distributions), or
 - (ii) section 213A of ICTA (exempt distributions: division of business), and 10
 - (b) there is a chargeable payment within the meaning of section 214(2) of ICTA within 5 years after the making of that distribution.

Origin: FA 1996 Sch.9 para.12A(5).

- (2) If condition A or B is met, this Part applies as if –
- (a) the transferee had assigned the asset or liability representing the relevant loan relationship immediately before the chargeable payment was made, 15
 - (b) the assignment had been for a consideration of an amount equal to the fair value of the asset or liability immediately before the transferee ceased to be a member of the relevant group, and 20
 - (c) the transferee had immediately reacquired the asset or liability for a consideration of the same amount.

Origin: FA 1996 Sch.9 para.12A(6).

- (3) Condition A is that if subsection (2) applied a credit would be brought into account for the purposes of this Part by the transferee as a result of subsection (2)(a) and (b). 25

Origin: FA 1996 Sch.9 para.12A(3), (7).

- (4) Condition B is that –
- (a) the relevant loan relationship is a creditor relationship,
 - (b) the company has a hedging relationship between a derivative contract and the creditor relationship, and 30
 - (c) as a result of section [{j72630ab}](#)(2)(a) and (b) a credit must be brought into account by the transferee for the purposes of Part 8 (derivative contracts) in respect of the derivative contract.

Origin: FA 1996 Sch.9 para.12A(4), (7). 35

- (5) Section [{j72612e}](#) (meaning of “hedging relationship”) applies for the purposes of this section.

Origin: FA 1996 Sch.9 para.12A(9).

CHAPTER 2

EUROPEAN CROSS-BORDER TRANSFERS OF BUSINESS

Introduction

13 Introduction to Chapter [j6ml12d1]

- (1) This Chapter applies if – 5
- (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 subsection,
- but see section 18 (tax avoidance etc) and section 21 (disapplication of Chapter where transparent entities involved). 10
- [Origin: FA 1996 Sch.9 paras.12D\(1\), \(2\), 12H\(1\).](#)
- (2) Condition A is that –
- (a) a company resident in one member State transfers to a company resident in another member State the whole or part of a business carried on in the United Kingdom, 15
 - (b) the transfer is wholly in exchange for shares or debentures issued by the transferee to the transferor, and
 - (c) immediately after the transfer the transferee is within the charge to corporation tax.
- [Origin: FA 1996 Sch.9 para.12D\(1\).](#) 20
- (3) Condition B is that –
- (a) a company transfers part of its business to one or more 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, 25
 - (d) at least one transferee is resident in a member State other than that in which the transferor is resident (and each transferee is resident in a member State, but not necessarily the same one),
 - (e) the transferor continues to carry on a business after the transfer,
 - (f) immediately after the transfer each transferee is within the charge to corporation tax, and 30
 - (g) 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 35
 - (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. 40

[Origin: FA 1996 Sch.9 para.12D\(2\), \(3\), \(4\).](#)

- (4) In this Chapter –

“the transfer of business” means the transfer of business mentioned in subsection (2)(a) or (3)(a),

“transferee” has the same meaning as in subsection (2) or (3), and

“the transferor” has the same meaning as in subsection (2) or (3).

Origin: FA 1996 Sch.9 para.12J(1); drafting.

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- (5) For the meaning of “company” and “resident in a member State”, see section 22.

Origin: Drafting.

Transfers of loan relationships at notional carrying value

14 Transfer of loan relationship at notional carrying value [j6m112D2] 10

- (1) This section applies if in the course of the transfer of business the transferor transfers an asset or liability representing a loan relationship to a transferee.

Origin: FA 1996 Sch.9 para.12D(1), (2), (6).

- (2) For the purpose of determining the credits and debits to be brought into account in respect of the loan relationship in accordance with this Part, the transferor and the transferee are treated as having entered into the transfer of that asset or liability for a consideration of an amount equal to the notional carrying value of the asset or liability. 15

Origin: FA 1996 Sch.9 para.12D(6).

- (3) For the purposes of this section – 20
- (a) “carrying value” has the same meaning as it has for the purposes of section {j0696919aa} (see section {j0696919ad}(2) and (4)), and
- (b) “notional carrying value”, in relation to an asset or liability, means the amount that would have been its carrying value in the accounts of the transferor if a period of account had ended immediately before the date 25
- when the transferor ceased to be party to the loan relationship.

Origin: FA 1996 Sch.9 para.12D(6); drafting.

- (4) This section is subject to section 15 (transferor using fair value accounting).

Origin: Drafting.

15 Transferor using fair value accounting [j6m112d3] 30

- (1) This section applies instead of section 14 if, in a case where that section would otherwise apply, the transferor is regarded for the purposes of this section as using fair value accounting in respect of the loan relationship (see subsection (4)).

Origin: FA 1996 Sch.9 para.12D(7); drafting.

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- (2) The amount that is to be brought into account by the transferor in respect of the transfer of the asset or liability mentioned in section 14(1) (“the transferor’s amount”) is –

- (a) if an asset is to be brought into account, its fair value as at the date when the transferee becomes party to the loan relationship, or the fair value of the rights under or interest in it as at that date, and
- (b) if a liability is to be brought into account, its fair value as at that date.

Origin: FA 1996 Sch.9 para.12D(7); drafting. 5

- (3) For any accounting period in which the transferee is party to the loan relationship, for the purpose of determining the credits and debits to be brought into account in respect of it for the purposes of this Part, the transferee is treated as if it had acquired the asset or liability representing the relationship for a consideration equal to the transferor's amount. 10

Origin: FA 1996 Sch.9 para.12D(7); drafting.

- (4) The transferor is regarded for the purposes of this section as using fair value accounting in respect of the loan relationship only if the credits and debits to be brought into account for the purposes of this Part as respects the relationship are determined on that basis. 15

Origin: FA 1996 Sch.9 para.12D(7); drafting.

- (5) It does not matter for the purposes of subsection (4) if the transferor does not otherwise use fair value accounting in respect of the loan relationship.

Origin: FA 1996 Sch.9 para.12D(7); drafting.

16 Reorganisations involving loan relationships [j696912G1b] 20

- (1) This section applies if –
 - (a) sections 127 to 130 of TCGA 1992 (reorganisations: equation of original shares and new holding) –
 - (i) apply in relation to a reorganisation, or
 - (ii) would so apply but for section 116(5) of that Act (which disapplies those sections where the original shares or the new holding consists of or includes a qualifying corporate bond),
 - (b) the original shares consist of or include an asset representing a loan relationship,
 - (c) section 14 or 15 applies as a result of condition B in section 13 being met in relation to the transfer in the course of which the reorganisation occurs. 25

Origin: FA 1996 Sch.9 para 12G(1), (2).

- (2) For the purposes of this Part such debits and credits are to be brought into account as would be brought into account if the reorganisation were a disposal of the asset representing the loan relationship at a consideration equal to its notional carrying value. 35

Origin: FA 1996 Sch.9 para.12G(4).

- (3) For the purposes of this section, the notional carrying value of that asset is the amount that would have been its carrying value in the accounts of the original holder if a period of account had ended immediately before the the date when the reorganisation occurred. 40

Origin: FA 1996 Sch.9 para.12G(4); drafting.

- (4) In this section –
- “carrying value” has the same meaning as it has for the purposes of section [j0696919aa](#) (see section [j0696919ad](#))(2) and (4),
 - “original holder” means a person holding the original shares immediately before the reorganisation, 5
 - “original shares” has the meaning given by section 126(1) of TCGA 1992 (application of sections 126 to 131 of that Act), and
 - “reorganisation” includes anything to which sections 127 to 130 of that Act apply as if it were a reorganisation,
- [Origin: FA 1996 Sch.9 para 12G\(4\), \(6\).](#) 10
- (5) This section is subject to –
- (a) section 17 (original holder using fair value accounting), and
 - (b) section 21 (disapplication of Chapter where transparent entities involved).
- [Origin: Drafting.](#) 15
- 17 Original holder using fair value accounting [j696912G4b](#)**
- (1) This section applies instead of section 16 if, in a case where that section would otherwise apply, the original holder is regarded for the purposes of this section as using fair value accounting in respect of the loan relationship constituting or included in the original shares. 20
- [Origin: FA 1996 Sch.9 para.12G\(5\); drafting.](#)
- (2) The amount that is to be brought into account by the original holder in respect of the reorganisation (“the disposal amount”) is –
- (a) the fair value of the asset representing the loan relationship as at the date when the reorganisation occurred, or 25
 - (b) the fair value of the rights under or interest in that relationship as at that date.
- [Origin: FA 1996 Sch.9 para.12G\(5\); drafting.](#) 30
- (3) For any accounting period in which a successor creditor company is a party to the loan relationship, for the purpose of determining the credits and debits to be brought into account in respect of the relationship for the purposes of this Part, the successor creditor company is treated as if it had acquired the asset representing the loan relationship for a consideration equal to the disposal amount. 35
- [Origin: FA 1996 Sch.9 para.12G\(5\); drafting.](#)
- (4) Subsections (4) and (5) of section 15 apply for the purposes of this section as they apply for the purposes of that section, but taking the references in that section to the transferor as references to the original holder.
- [Origin: FA 1996 Sch.9 para.12G\(5\); drafting.](#)
- (5) In this section –
- “successor creditor company” means a company in relation to which the loan relationship constituting or included in the original shares is a creditor relationship immediately after the reorganisation, and 40

“original holder” and “original shares” have the same meaning as in section 16.

Origin: Drafting.

- (6) This section is subject to section 21 (disapplication of Chapter where transparent entities involved). 5

Origin: Drafting.

Exception for tax avoidance cases and clearances

18 Tax avoidance etc [j6ml12F1]

- (1) This Chapter does not apply in relation to the transfer of business if – 10
- (a) the transfer of business is not effected for genuine commercial reasons, or
 - (b) the transfer of business forms part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.

Origin: FA 1996 Sch.9 para.12F(1). 15

- (2) But subsection (1) does not prevent this Chapter from applying if before the transfer of business –
- (a) the companies mentioned in section 13(2)(a) or (3)(a) have applied to the Commissioners for Her Majesty’s Revenue and Customs, and
 - (b) the Commissioners have notified them that they are satisfied this section will not have that effect. 20

Origin: FA 1996 Sch.9 para.12F(2).

19 Procedure on application for clearance [j6ml12B7]

- (1) This section applies in relation to an application under section 18(2).

Origin: FA 1996 Sch.9 para.12F(3); drafting. 25

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

Origin: FA 1996 Sch.9 para.12F(3); drafting.

- (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. 30

Origin: FA 1996 Sch.9 para.12F(3); drafting.

- (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 1996 Sch.9 para.12F(3); drafting. 35

- (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.

Origin: FA 1996 Sch.9 para.12F(3); drafting.

20 Decision on application for clearance [\[j6m12B8\]](#)

- (1) The Commissioners for Her Majesty’s Revenue and Customs must notify their decision on an application under section 18(2) to the applicant –
- (a) within 30 days of receiving the application, or
 - (b) if they give a notice under section 19(3), within 30 days of the notice being complied with. 5

Origin: FA 1996 Sch.9 para.12F(3); drafting.

- (2) If the Commissioners for Her Majesty’s Revenue and Customs –
- (a) notify the applicant that they are not satisfied as mentioned in section 18(2)(b), or 10
 - (b) do not notify their decision to the applicant within the time required by subsection (1),

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 19(3). 15

Origin: FA 1996 Sch.9 para.12F(3); drafting.

- (3) In that case any notification by the Special Commissioners has effect for the purposes of section 18(2)(b) as if it were a notification by the Commissioners for Her Majesty’s Revenue and Customs.

Origin: FA 1996 Sch.9 para.12F(3); drafting. 20

- (4) If any particulars provided under section 19 do not fully and accurately disclose all facts and considerations material for the decision –
- (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. 25

Origin: FA 1996 Sch.9 para.12F(3); drafting.

Transparent entities

21 Disapplication of Chapter where transparent entities involved [\[j6m12H1\]](#)

- (1) This Chapter does not apply in relation to the transfer of business if the transferor is a transparent entity. 30

Origin: FA 1996 Sch.9 para.12H(1), (2).

- (2) If any transferee is a transparent entity, sections 16 and 17 (reorganisations involving loan relationships) do not apply.

Origin: FA 1996 Sch.9 para.12H(1), (2). 35

- (3) In this section “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.

Origin: FA 1996 Sch.9 para.12J(1); drafting. 40

- (4) For the meaning of “resident in a member State”, see section 22.

Origin: Drafting.

Interpretation

22 Interpretation [j6ml12j2]

- (1) In this Chapter “company” means any entity listed as a company in the Annex to the Mergers Directive. 5

Origin: FA 1996 Sch.9 para.12J(1).

- (2) 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. 10

Origin: FA 1996 Sch.9 para.12J(2).

CHAPTER 3

EUROPEAN CROSS-BORDER MERGERS 15

Introduction

23 Introduction to Chapter [j6ml12B1]

- (1) This Chapter applies if the following conditions are met –
- (a) conditions A to D,
 - (b) in the case of a merger within subsection (2)(a), (b) or (c), condition E, and 20
 - (c) in the case of a merger within subsection (2)(c) or (d), condition F, but see section 29 (tax avoidance etc) and section 30 (disapplication of Chapter where transparent entities involved).

Origin: FA 1996 Sch.9 paras.12B(1), (2), 12I(1). 25

- (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),
 - (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 Co-operative Society (SCE), 30
 - (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 35
 - (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. 40

Origin: FA 1996 Sch.9 para.12B(1), (2).

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

Origin: FA 1996 Sch.9 para.12B(1), (2).

- (4) Condition C is that the merging companies are not all resident in the same State. 5

Origin: FA 1996 Sch.9 para.12B(1), (2).

- (5) Condition D is that immediately after the merger the transferee is within the charge to corporation tax.

Origin: FA 1996 Sch.9 para.12B(1), (2).

- (6) Condition E is that – 10

(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 is not so made only because, and only so far as, the 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. 15

Origin: FA 1996 Sch.9 para.12B(1), (2). 20

- (7) Condition F 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 1996 Sch.9 paras.12B(2).

- (8) In this Chapter, “the merger” and “the merging companies” have the same meaning as in this section. 25

Origin: Drafting.

- (9) See –

(a) section 31 for the meaning of “company”, “co-operative society” and “resident in a member State”, and 30

(b) section 24 for the meaning of “the transferee” and “transferor”.

Origin: Drafting.

24 Meaning of “the transferee” and “transferor” [j6ml12B2]

- (1) In this Chapter, “the transferee” means – 35
- (a) in relation to a merger within section 23(2)(a), the SE,
- (b) in relation to a merger within section 23(2)(b), the SCE, and
- (c) in relation to a merger within section 23(2)(c) or (d), the company to which assets and liabilities are transferred.

Origin: FA 1996 Sch.9 para.12B(9).

- (2) In this Chapter “transferor” means – 40

- (a) in relation to a merger within section 23(2)(a), a company merging to form the SE,
- (b) in relation to a merger within section 23(2)(b), a co-operative society merging to form the SCE, and
- (c) in relation to a merger within section 23(2)(c) or (d), a company transferring all its assets and liabilities. 5

Origin: FA 1996 Sch.9 para.12B(9).

Transfers of loan relationships at notional carrying value

25 Transfer of loan relationship at notional carrying value [j6m112B3]

- (1) This section applies if an asset or liability representing a loan relationship is transferred in the course of the merger. 10

Origin: FA 1996 Sch.9 para.12B(3).

- (2) For the purpose of determining the credits and debits to be brought into account in respect of the loan relationship in accordance with this Part, the transferor and the transferee are treated as having entered into the transfer of that asset or liability for a consideration of an amount equal to the notional carrying value of the asset or liability. 15

Origin: FA 1996 Sch.9 para.12B(3).

- (3) For the purposes of this section –
 - (a) “carrying value” has the same meaning as it has for the purposes of section {j0696919aa} (see section {j0696919ad})(2) and (4)), and 20
 - (b) “notional carrying value”, in relation to an asset or liability, means the amount that would have been its carrying value in the accounts of the transferor if a period of account had ended immediately before the date when the transferor ceased to be party to the loan relationship. 25

Origin: FA 1996 Sch.9 para.12B(3); drafting.

- (4) This section is subject to section 26 (transferor using fair value accounting).

Origin: Drafting.

26 Transferor using fair value accounting [j6m112B4]

- (1) This section applies instead of section 25 if, in a case where that section would otherwise apply, the transferor is regarded for the purposes of this section as using fair value accounting in respect of the loan relationship (see subsection (4)). 30

Origin: FA 1996 Sch.9 para.12B(4).

- (2) The amount that is to be brought into account by the transferor in respect of the transfer of the asset or liability mentioned in section 25(1) (“the transferor’s amount”) is –
 - (a) if an asset is to be brought into account, its fair value as at the date when the transferee becomes party to the loan relationship, or the fair value of the rights under or interest in it as at that date, and 40
 - (b) if a liability is to be brought into account, its fair value as at that date.

Origin: FA 1996 Sch.9 para.12B(4).

- (3) For any accounting period in which the transferee is party to the loan relationship, for the purpose of determining the credits and debits to be brought into account in respect of it for the purposes of this Part, the transferee is treated as if it had acquired the asset or liability representing the relationship for a consideration equal to the transferor's amount. 5

Origin: FA 1996 Sch.9 para.12B(4).

- (4) The transferor is regarded for the purposes of this section as using fair value accounting in respect of the loan relationship only if the credits and debits to be brought into account for the purposes of this Part as respects the relationship are determined on that basis. 10

Origin: FA 1996 Sch.9 para.12B(4).

- (5) It does not matter for the purposes of subsection (4) if the transferor does not otherwise use fair value accounting in respect of the loan relationship.

Origin: FA 1996 Sch.9 para.12B(4). 15

27 Reorganisations involving loan relationships [j696912G1A]

- (1) This section applies if –
- (a) sections 127 to 130 of TCGA 1992 (reorganisations: equation of original shares and new holding) –
 - (i) apply in relation to a reorganisation, or 20
 - (ii) would so apply but for section 116(5) of that Act (which disapplies those sections where the original shares or the new holding consists of or includes a qualifying corporate bond),
 - (b) the original shares consist of or include an asset representing a loan relationship, and 25
 - (c) section 25 or 26 applies in relation to the transfer in the course of the merger in which the reorganisation occurs.

Origin: FA 1996 Sch.9 para 12G(1), (2).

- (2) For the purposes of this Part such debits and credits are to be brought into account as would be brought into account if the reorganisation were a disposal of the asset representing the loan relationship at a consideration equal to its notional carrying value. 30

Origin: FA 1996 Sch.9 para.12G(4).

- (3) For the purposes of this section, the notional carrying value of that asset is the amount that would have been its carrying value in the accounts of the original holder if a period of account had ended immediately before the date when the reorganisation occurred. 35

Origin: FA 1996 Sch.9 para.12G(4); drafting.

- (4) In this section –
- “carrying value” has the same meaning as it has for the purposes of section {j0696919aa} (see section {j0696919ad}(2) and (4)), 40
 - “original holder” means a person holding the original shares immediately before the reorganisation,

“original shares” has the meaning given by section 126(1) of TCGA 1992 (application of sections 126 to 131 of that Act), and

“reorganisation” includes anything to which sections 127 to 130 of that Act apply as if it were a reorganisation.

Origin: FA 1996 Sch.9 para 12G(4), (6). 5

- (5) This section is subject to –
- (a) section 28 (original holder using fair value accounting), and
 - (b) section 30 (disapplication of Chapter where transparent entities involved).

Origin: Drafting. 10

28 Original holder using fair value accounting [j696912G4a]

- (1) This section applies instead of section 27 if, in a case where that section would otherwise apply, the original holder is regarded for the purposes of this section as using fair value accounting in respect of the loan relationship constituting or included in the original shares. 15

Origin: FA 1996 Sch.9 para.12G(5).

- (2) The amount that is to be brought into account by the original holder in respect of the reorganisation (“the disposal amount”) is –
- (a) the fair value of the asset representing the loan relationship as at the date when the reorganisation occurred, or 20
 - (b) the fair value of the rights under or interest in that relationship as at that date.

Origin: FA 1996 Sch.9 para.12G(5); drafting.

- (3) For any accounting period in which a successor creditor company is a party to the loan relationship, for the purpose of determining the credits and debits to be brought into account in respect of the relationship for the purposes of this Part, the successor creditor company is treated as if it had acquired the asset representing the loan relationship for a consideration equal to the disposal amount. 25

Origin: FA 1996 Sch.9 para.12G(5); drafting. 30

- (4) Subsections (4) and (5) of section 26 apply for the purposes of this section as they apply for the purposes of that section, but taking the references in that section to the transferor as references to the original holder.

Origin: FA 1996 Sch.9 para.12G(5); drafting.

- (5) In this section – 35
- “successor creditor company” means a company in relation to which the loan relationship constituting or included in the original shares is a creditor relationship immediately after the reorganisation, and
 - “original holder” and “original shares” have the same meaning as in section 27. 40

Origin: Drafting.

- (6) This section is subject to section 30 (disapplication of Chapter where transparent entities involved).

Origin: Drafting.

Exception for tax avoidance cases and clearances

29 Tax avoidance etc [j6ml12B5]

- (1) This Chapter does not apply in relation to the merger if –
- (a) the merger is not effected for genuine commercial reasons, or 5
 - (b) the merger forms part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.

Origin: FA 1996 Sch.9 para.12B(6).

- (2) But subsection (1) does not prevent this Chapter from applying if before the merger –
- (a) any of the merging companies have applied to the Commissioners for Her Majesty’s Revenue and Customs, and 10
 - (b) the Commissioners have notified them that they are satisfied that this section will not have that effect. 15

Origin: FA 1996 Sch.9 para.12B(7).

- (3) Sections 19 and 20 have effect in relation to subsection (2) as in relation to section 18(2), taking the reference in section 20(2)(a) to being satisfied as mentioned in section 18(2)(b) as a reference to being satisfied as mentioned in subsection (2)(b) of this section. 20

Origin: FA 1996 Sch.9 para.12B(8); drafting.

Transparent entities

30 Disapplication of Chapter where transparent entities involved [j6ml12i1]

- (1) This section applies if one or more of the merging companies is a transparent entity. 25

Origin: FA 1996 Sch.9 para.12I(1).

- (2) If as a result of the merger the assets and liabilities of a transparent entity are transferred to another company, this Chapter does not apply in relation to the transfer.

Origin: FA 1996 Sch.9 para.12I(2). 30

- (3) If as a result of the merger the assets and liabilities of one or more other companies are transferred to a transparent entity, sections 27 and 28 do not apply to the new holding.

Origin: FA 1996 Sch.9 para.12I(2).

- (4) In this section – 35
- “new holding” has the meaning given by section 126(1) of TCGA 1992 (application of sections 126 to 131 of that Act), 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.

Origin: FA 1996 Sch.9 para.12J(1); drafting.

Interpretation

31 Interpretation [j6m112j1] 5

- (1) In this Chapter –
- “company” means any entity listed as a company in the Annex to the Mergers Directive, and
 - “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. 10

Origin: FA 1996 Sch.9 para.12J(1).

- (2) 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. 15

Origin: FA 1996 Sch.9 para.12J(2).