

## **Chapter 1: Continuity on transfers of loans within groups or on reorganisations**

### **Overview**

1. This Chapter is Chapter 4 of Part 6 of the draft Bill. Explanatory notes have only been provided for clauses which have not been previously exposed. This Chapter now includes continuity on reorganisations within sections 127 to 130 of TCGA where those sections are applied by section 135 of TCGA (exchange of securities for those in another company) under paragraph 12G of Schedule 9 to FA 1996.

### **Clause 5: Issues of new securities on reorganisations**

2. This clause sets out the third case in clause 1(1)(c) where the continuity rules of the Chapter apply. This case is where section 135(3) of TCGA (exchange of securities for those in another company) applies (or would do but for section 116(5) of that Act) and certain conditions are met. It is based on paragraphs 12G(1) (3) and (6) and 12J(2) of Schedule 9 to FA 1996.

### **Clause 8: Issues of new securities on reorganisations: disposal at notional carrying value**

3. This clause provides that where clause 5 applies, debits and credits are to be brought into account as if there were a disposal of the loan relationship at their carrying value in the accounts. It is based on clause 12G(1) and (3) to (5) of Schedule 9 to FA 1996.

4. In *subsection (4)* “section {j0696919aa}” and “section {j0696919ad}” refer to clauses 326 (adjustments on change of accounting policy involving change of value) and 327 (meaning of “accounting value” and “carrying value”) of the draft Bill respectively.

### **Clause 9: Receiving company using fair value accounting**

5. This clause provides a rule to apply in place of the rule in clause 8 where fair value accounting is used by the company to which the issue of shares or debentures is made. It is based on paragraph 12G(5) of Schedule 9 to FA 1996 (which applies paragraph 12(2A) of that Schedule).

## **Chapter 2: European cross-border transfers of business**

### **Overview**

6. This Chapter gives the rules that apply for loan relationships in the case of cross-border transfers within the European Community of business carried in the United Kingdom. This is expected to become Chapter 13 of Part 6 of the Bill.

### **Clause 13: Introduction to Chapter**

7. This clause sets out the two conditions required for the Chapter to apply together with the claim requirement. It is based on paragraphs 12D(1) to (4), 12H(1) and 12J(1) of Schedule 9 to FA 1996.

8. *Subsection (2)(c)* rewrites paragraph 12D(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 effect is the same.

**Clause 14: Transfer of loan relationship at notional carrying value.**

9. This clause provides the rule that where either of the conditions in clause 13 applies, credits and debits on loan relationships which are transferred as part of the business transfer are brought into account by both the transferor and transferee as if the loan relationships had been transferred at the carrying value in the accounts of the transferor. It is based on paragraph 12D(1), (2) and (6) of Schedule 9 to FA 1996.

10. The definition of “notional carrying value” is taken from paragraph 12(2) of Schedule 9 to FA 1996.

**Clause 15: Transferor using fair value accounting**

11. This clause provides the rule to apply in place of clause 14 where the transferor company uses fair value accounting. It is based on paragraph 12D (7) of Schedule 9 to FA 1996 (which applies paragraph 12(2A) of that Schedule).

**Clause 16: Reorganisations involving loan relationships**

12. This clause provides for continuity of treatment in respect of loan relationships where a reorganisation under sections 127 to 130 of TCGA arises as a result of a transfer of business within this Chapter. Debits and credits are brought into account as if the relevant loan relationships were disposed of at their carrying value in the accounts of the company which holds them. The clause is based on paragraph 12G(1), (2), (4) and (6) of Schedule 9 to FA 1996.

**Clause 17: Original holder using fair value accounting**

13. This clause provides the rule to apply in place of the rule in clause 16 where fair value accounting is used by the original holder. It is based on paragraph 12G(5) of Schedule 9 to FA 1996 (which applies paragraph 12(2A) of that Schedule).

**Clause 18: Tax avoidance etc**

14. 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 the Chapter should apply. It is based on paragraph 12F(1) and (2) of Schedule 9 to FA 1996.

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

**Clause 19: Procedure on application for clearance**

16. This clause gives the rules that apply where a clearance application is made under clause 18 to the Commissioners for HMRC. It is based on paragraph 12F(3) of Schedule 9 to FA 1996.

17. Paragraph 12F(3) applies the rules in section 138(2) to (5) of TCGA which this and the following clause write out in full.

**Clause 20: Decision on application for clearance**

18. This clause gives the time limit within which HMRC must give a decision following a clearance application and procedures relating to appeals. It is based on paragraph 12F(3) of Schedule 9 to FA 1996.

**Clause 21: Disapplication of Chapter where transparent entities involved**

19. This clause disapplies the Chapter under certain circumstances where transparent entities are involved in the transfer of business. It is based on paragraphs 12H(1) and (2) and 12J(1) of Schedule 9 to FA 1996.

20. The last two words of paragraph 12H(2)(b) (“paragraph 12G does not apply in relation to it”) have not been rewritten in *subsection (2)* because it is not considered that they add anything to paragraph (b). These words do not appear in paragraph 12H(2)(a) which states simply that “paragraph ... 12G [does] not apply to the transfer”.

**Clause 22: Interpretation**

21. This clause defines “company” and company residence in a member State for the purposes of the Chapter. It is based on paragraph 12J of Schedule 9 to FA 1996.

**Chapter 3: European cross-border mergers**

***Overview***

22. This Chapter gives the rules that apply for loan relationships in the case of mergers where the merging companies are resident in different member States of the European Community. This is expected to become Chapter 14 of Part 6 of the Bill.

**Clause 23: Introduction to Chapter**

23. This clause sets out the conditions (which include the different categories of merger) under which the Chapter applies. It is based on paragraphs 12B(1) and (2) and 12I(1) of Schedule 9 to FA 1996.

24. *Subsection (5)* rewrites paragraph 12B(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 24: Meaning of “the transferee” and “transferor”**

25. This clause gives the meaning of the two terms for the different categories of merger set out in clause 23(2). It is based on paragraph 12B(9) of Schedule 9 to FA 1996.

**Clause 25: Transfer of loan relationship treated at notional carrying value.**

26. This clause provides the rule that debits and credits on loan relationships 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 12B(3) of Schedule 9 to FA 1996.

**Clause 26: Transferor using fair value accounting**

27. This clause provides the rule to apply in place of clause 25 where the transferor company uses fair value accounting. It is based on paragraph 12B(4) of Schedule 9 to FA 1996 (which applies paragraph 12(2A) of that Schedule).

**Clause 27: Reorganisations involving loan relationships**

28. This clause provides for continuity of treatment in respect of loan relationships where a reorganisation under sections 127 to 130 arises as a result of a merger within this Chapter. Credits and debits are brought into account as if the loan relationships within the reorganisation were disposed of at their carrying value in the accounts of the company which holds them. It is based on paragraph 12G(1), (2), (4) and (6) of Schedule 9 to FA 1996.

**Clause 28: Original holder using fair value accounting**

29. This clause provides the rule to apply in place of the rule in clause 27 where fair value accounting is used by the original holder. It is based on paragraph 12G(5) of FA 1996 (which applies paragraph 12(2A) of that Schedule).

**Clause 29: Tax avoidance etc**

30. This clause disapplies the Chapter if the merger is not effected for genuine commercial reasons unless the Commissioners for HMRC are satisfied, following an application, that the Chapter should apply. It is based on paragraph 12B(6) to (8) of Schedule 9 to FA 1996.

**Clause 30: Disapplication of Chapter where transparent entities are involved.**

31. This clause disapplies the Chapter under certain circumstances where transparent entities are involved in the merger. It is based on paragraphs 12I(1), (2) and 12J(1) of Schedule 9 to FA 1996.

32. Paragraph 12I(2)(b) provides that paragraph 12G shall not apply in relation to shares or debentures issued by the transparent entity. This has been rewritten in *subsection (3)* to the effect that clauses 27 and 28 do not apply to the new holding.

**Clause 31: Interpretation**

33. This clause defines some terms used in the Chapter. It is based on paragraph 12J of Schedule 9 to FA 1996.