

**HM REVENUE AND CUSTOMS
RESOLUTIONS 29 AND 30**

**FINANCE BILL 2005
COMMITTEE
CLAUSE 56**

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John Healey

(Wentworth - Lab)

Amendment 144

Clause 56, page 49, line 7, after “applies” insert “(or would apply but for section 140E(1)(d))”

EXPLANATORY NOTE

SUMMARY

1. Clause 56 introduces provisions relating to the Societas Europaea (SE), a new European company created by Council Regulation (EC) No 2157/2001.
2. The provisions apply to instances in which an SE is formed by the merger of two or more companies where not all of the merging companies are resident in the same Member State.
3. The provisions provide that Capital Allowance charges should not arise as a result of such a merger, to the extent that the assets involved remain within the scope of UK tax.
4. The amendment extends such treatment to a limited number of cases currently outside the scope of the clause.

DETAILS

5. New S.561A(1) CAA 2001 states that the provisions apply to the transfer of a “qualifying asset” as part of a process of a merger to which S.140E TCGA applies.

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6. S.140E (1)(d) in turn states that it only applies where S.139 TCGA 1992 does not apply to qualifying transferred assets.
7. By inserting the words “or would apply but for section 140E(1)(d)” after the word “applies” at the end of new section 561A(1) CAA 2001 the amendment ensures that such treatment is extended to mergers to form an SE falling within S.139 TCGA 1992.

BACKGROUND NOTE

8. The European Company Statute (ECS) Regulation was adopted by the EU Council of Ministers on 8 October 2001. The Regulation brought into existence the European Company (Societas Europaea or SE) and provides rules governing SEs.
9. Tax is not explicitly covered within the regulation so the tax law of the member state in which the SE is based applies to SEs. The addition of SEs to other EU legislation (the Mergers Directive) means that UK tax measures are needed to ensure that a UK company’s decision to merge with a company in another member State to form an SE is not disadvantaged (or driven) by tax considerations.
10. The implementation date of SEs was 8 October 2004. Implementation of the legislation has been held back by agreement on the merger’s directive. This was agreed in mid December 2004.
11. Clause 56 amends legislation to give certainty regarding the tax treatment of certain transactions involving European Companies (SEs), particularly formation by merger. It will enable UK businesses to take advantage of the new corporate vehicle if they so wish.