HM REVENUE AND CUSTOMS
RESOLUTIONS: 29 & 30

FINANCE BILL 2005
COMMITTEE
CLAUSE 56

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John Healey (Wentworth – Lab)

Amendment 145

Clause 56, page 49, line 17, leave out subsection (3) and insert –

3) For the purposes of subsection (1) an asset is a "qualifying asset" if –

a) it is transferred to the SE as part of the merger forming it, and

b) subsections (4) and (5) are satisfied in respect of it.

4) This subsection is satisfied in respect of an asset if –

a) the transferor is resident in the United kingdom at the time of the transfer, or

b) the asset is an asset of a permanent establishment in the United Kingdon of the transferor.

5) This subsection is satisfied in respect of an asset if –

a) the transferee SE is a resident in the United Kingdom on formation, or

b) the asset is an asset of a permanent establishment in the United Kingdom of the transferee SE on its formation.

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 of 8 October 2001.

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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, to the extent that the assets involved remain within the scope of UK tax, as a result of such a merger.

4. The effect of the amendment is to extend similar treatment to the limited number cases where the assets involved in such a merger fall outside the provision's current definition of "qualifying asset".

DETAILS

5. Subsection 3 of Clause 56 currently defines "qualifying assets", for the purpose of the provisions, as being the same as the definition of "qualifying transferred asset" in S.140E TCGA 1992.

6. This definition means that only those assets which are eligible for Capital Allowance and within the Chargeable Gains regime would be "qualifying assets" for the purposes of the provision.

7. The amendment extends the definition of "qualifying asset" to cover all assets eligible for Capital Allowances that are involved in a merger to form an SE, to the extent that the assets involved remain within the scope of UK tax. Thus including Capital Allowance assets that are outside the Chargeable Gains regime. This ensures that that Clause 56 is in full accordance with the EU Mergers Directive.

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BACKGROUND NOTE

1. 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.

2. Tax is not explicitly covered within the Regulation so the tax law of the Member State in which the SE is based applies to SE's. The addition of SE's 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.

3. The implementation date of SE's was 8 October 2004. Implementation of the legislation has been held back by agreement on the merger's directive. This was not agreed until mid December 2004.

4. This amendment is as a result of representations from the Law Society.