

Credit for tax. FA92 s69 634.—(1) In this section—

“law of the Member State which has the effect of deferring a charge to tax on a gain” means any law of the Member State concerned which provides—

(a) that the gain accruing to the transferring company on the disposal of the assets in the course of the transfer is to be treated as not accruing until the disposal of the assets by the receiving company,

(b) that the receiving company is to be treated as having acquired the assets for a consideration of such amount as would secure that, for the purposes of charging the gain on the disposal to tax in that Member State, neither a gain nor a loss would accrue to the transferring company on the transfer and the receiving company is to be treated as if the acquisition of the assets by the transferring company had been the receiving company's acquisition of the assets, or

(c) such other deferral of a charge to tax as corresponds to paragraph (a) or (b);

“relevant certificate given by the tax authorities of a Member State” means a certificate so given and which states—

(a) whether gains accruing to the transferring company on the transfer would have been chargeable to tax under the law of the Member State but for—

(i) the Directive, or

(ii) any provision of the law of the Member State which has the effect of deferring a charge to tax on a gain in the case of such a transfer,

(b) if those gains accruing would have been so chargeable, the amount of tax which would have been payable under that law if, in so far as is permitted under that law, any losses arising on the transfer are set against any gains so arising and any deductions and reliefs available to the transferring company under that law other than the provisions mentioned in paragraph (a) had been claimed.

(2) Where—

(a) a company resident in the State transfers the whole or part of a trade which immediately before the time of the transfer it carried on in a Member State (other than the State) through a branch or agency to a company not resident in the State,

(b) the transfer includes the whole of the assets of the transferring company used for the purposes of the trade or the part of the trade or the whole of those assets other than cash, and

(c) the consideration for the transfer consists wholly or partly of the issue to the transferring company of securities in the receiving company,

then, tax specified in a relevant certificate given by the tax authorities of the Member State in which the trade was so carried on shall be treated for the purposes of Chapter 1 of Part 35 as tax—

- (i) payable under the law of that Member State, and
- (ii) in respect of which credit may be allowed under a bilateral agreement.