

Disposals of business or farm on “retirement”. CGTA75 s26(1) to (6); FA90 s84(c)(iii); FA91 s42(b); FA95 s71(1); FA96 s60(1) 598.—(1) (a) In this section and in section 599—

“chargeable business asset” means an asset (including goodwill but not including shares or securities or other assets held as investments) which is, or is an interest in, an asset used for the purposes of farming, or a trade, profession, office or employment, carried on by—

(i) the individual,

(ii) the individual's family company, or

(iii) a company which is a member of a trading group of which the holding company is the individual's family company,

other than an asset on the disposal of which no gain accruing would be a chargeable gain;

“family company”, in relation to an individual, means, subject to paragraph (b), a company the voting rights in which are—

(i) as to not less than 25 per cent, exercised by the individual, or

(ii) as to not less than 75 per cent, exercisable by the individual or a member of his or her family and, as to not less than 10 per cent, exercisable by the individual himself or herself;

“family”, in relation to an individual, means the husband or wife of the individual, and a relative of the individual or of the individual's husband or wife, and “relative” means brother, sister, ancestor or lineal descendant;

“full-time working director” means a director required to devote substantially the whole of his or her time to the service of the company in a managerial or technical capacity;

“holding company” means a company whose business (disregarding any trade carried on by it) consists wholly or mainly of the holding of shares or securities of one or more companies which are its 75 per cent subsidiaries;

“qualifying assets”, in relation to a disposal, includes—

(i) the chargeable business assets of the individual which apart from tangible movable property he or she has owned for a period of not less than 10 years ending with the disposal, and

(ii) the shares or securities which the individual has owned for a period of not less than 10 years ending with the disposal, being shares or securities of a company which has been a trading or a farming company and the individual's family company or a member of a trading group of which the holding company is

that individual's family company during a period of not less than 10 years ending with the disposal and of which he or she has been a working director for a period of not less than 10 years during which period he or she has been a full-time working director of that company for a period of not less than 5 years;

“trade”, “farming”, “profession”, “office” and “employment” have the same meanings respectively as in the Income Tax Acts;

“trading company” means a company whose business consists wholly or mainly of the carrying on of one or more trades or professions;

“trading group” means a group of companies consisting of the holding company and its 75 per cent subsidiaries, the business of whose members taken together consists wholly or mainly of the carrying on of one or more trades or professions;

“75 per cent subsidiary” has the meaning assigned to it by section 9.

(b) For the purposes of the definition of “family company”, where a company which is a holding company would not but for this paragraph be an individual's family company, but would be such a company if the individual had not at any time on or after the 6th day of April, 1987, and before the 6th day of April, 1990, disposed of shares in the company to a child ) of the individual, the company shall be deemed to be the individual's family company.

(c) In this section, references to the disposal of the whole or part of an individual's qualifying assets include references to the disposal of the whole or part of the assets provided or held for the purposes of an office or employment by the individual exercising that office or employment.

(d) For the purposes of the definition of “qualifying assets”, there shall be taken into account—

(i) the period of ownership of a spouse of the individual as if it were a period of ownership of the individual,

(ii) where the chargeable business assets are new assets within the meaning of section 597, the period of ownership of the old assets as if it were a period of ownership of the new assets,

(iii) where the qualifying assets are shares or securities in a family company to which section 600 applies, the period immediately before the transfer to the company of chargeable business assets during which those assets were owned by the individual as if it were a period of ownership of the individual of the qualifying assets or a period throughout which he or she was a full-time working director, as may be appropriate, and

(iv) a period immediately before the death of the spouse of the individual throughout which the deceased was a full-time working director as if it were a period throughout which the individual was a full-time working director.

(2) (a) Subject to this section, where an individual who has attained the age of 55 years disposes of

the whole or part of his or her qualifying assets, then—

(i) if the amount or value of the consideration for the disposal does not exceed £250,000, relief shall be given in respect of the full amount of capital gains tax chargeable on any gain accruing on the disposal;

(ii) if the amount or value of the consideration for the disposal exceeds £250,000, the amount of capital gains tax chargeable on the gain accruing on the disposal shall not exceed 50 per cent of the difference between the amount of that consideration and £250,000.

(b) For the purposes of paragraph (a), the amount of capital gains tax chargeable in respect of the gain shall be the amount of tax which would not have been chargeable but for that gain.

(3) For the purposes of subsection (2), the consideration on the disposal of qualifying assets by the individual shall be aggregated, and nothing in this section shall affect the computation of gains accruing on the disposal of assets other than qualifying assets.

(4) Where a disposal of qualifying assets includes a disposal of shares or securities of the individual's family company, the amount of the consideration to be taken into account for the purposes of subsection (2) in respect of those shares or securities shall be the proportion of the consideration for those shares or securities which is equal to—

(a) in a case where the individual's family company is not a holding company, the proportion which the part of the value of the company's chargeable assets at the time of the disposal which is attributable to the value of the company's chargeable business assets bears to the whole of that value, and

(b) in a case where the individual's family company is a holding company, the proportion which the part of the value of the chargeable assets of the trading group (excluding shares or securities of one member of the group held by another member of the group) at the time of the disposal which is attributable to the value of the chargeable business assets of the trading group bears to the whole of that value;

but nothing in this section shall affect liability on any gains calculated by reference to the balance of the consideration for the disposal of those shares or securities.

(5) For the purposes of subsection (4), every asset shall be a chargeable asset except one on the disposal of which by the company or a member of the trading group, as the case may be, at the time of the disposal of the shares or securities, no gain accruing to the company or member of the trading group, as the case may be, would be a chargeable gain.

(6) (a) The total of the amounts of relief given under this section for any year of assessment and all years of assessment before such year shall not exceed such amount as would reduce the total amount of capital gains tax chargeable for all those years of assessment below the amount which would be chargeable if the disposals of qualifying assets had all been made in the year of assessment.

(b) Where at any time the relief given under this section exceeds the amount of relief which would be given if the disposals of qualifying assets for the year of assessment and all years of assessment before

such year had been made in the year of assessment, any necessary adjustment may be made by means of assessment or additional assessment and such assessment may be made at any time not more than 10 years after the end of the year of assessment in which the last of such disposals is made.

(c) For the purposes of this subsection, a disposal of qualifying assets other than a disposal of the whole of such assets, by a husband to a wife or by a wife to a husband shall, notwithstanding section 1028 (5), be taken into account at the market value of the assets.

(7) Subsection (2) shall apply where under section 583 an individual is treated as disposing of interests in shares or securities of his or her family company in consideration of a capital distribution from the company (not being a distribution consisting of chargeable business assets) in the course of dissolving or winding up the company as it applies where he or she disposes of shares or securities of the company.