

Transfer of business to company. CGTA75 s51(1) and Sch2 par6; FA92 s61 600.—(1) In this section—

“net chargeable gains” means chargeable gains less allowable losses;

references to the business, in relation to shares or consideration received in exchange for the business, include references to assets of the business referred to in subsection (2).

(2) This section shall apply for the purposes of the Capital Gains Tax Acts where a person who is not a company transfers to a company a business as a going concern, together with the whole of the assets of the business or together with the whole of those assets other than cash, and the business is so transferred wholly or partly in exchange for shares (in this section referred to as “the new assets”) issued by the company to the person transferring the business.

(3) The amount determined under subsection (5) shall be deducted from the aggregate (in this section referred to as “the gain on the old assets”) of the net chargeable gains.

(4) For the purpose of computing any chargeable gain accruing on the disposal of any new asset—

(a) the amount determined under subsection (5) shall be apportioned between the new assets as a whole, and

(b) the sums allowable as a deduction under section 552 (1)(a) shall be reduced by the amount apportioned to the new asset under paragraph (a),

and, if the shares which comprise the new assets are not all of the same class, the apportionment between the shares under paragraph (a) shall be in accordance with their market values at the time they were acquired by the transferor.

(5) (a) In this subsection, “the cost of the new assets” means any sums which would be allowable as a deduction under section 552 (1)(a) if the new assets were disposed of as a whole in circumstances giving rise to a chargeable gain.

(b) The amount referred to in subsections (3) and (4)(a) shall be such portion of the gain on the old assets as bears the same proportion to the total of such gains as the cost of the new assets bears to the value of the whole of the consideration received by the transferor in exchange for the business.

(6) This section shall not apply to the transfer by a person of a business to a company wholly or partly in exchange for shares issued by the company, unless it is shown that the transfer is effected for bona fide commercial reasons and does not form part of any arrangement or scheme of which the main purpose or one of the main purposes is avoidance of liability to tax.