

Transfer of assets generally. FA92 s65 631.—(1) (a) This section shall apply where a company transfers the whole of a trade carried on by it in the State to another company and the consideration for the transfer consists solely of the issue to the transferring company of securities (in this section referred to as “the new assets”) in the receiving company.

(b) A company which transfers part of a trade to another company shall be treated for the purposes of this section as having carried on that part of its trade as a separate trade.

(2) (a) The transfer shall not be treated as giving rise to any allowance or charge provided for by section 307 or 308.

(b) There shall be made to or on the receiving company in accordance with sections 307 and 308 all such allowances and charges as would, if the transferring company had continued to carry on the trade and had continued to use the transferred assets for the purposes of the trade, have been made to or on the transferring company in respect of any assets transferred in the course of the transfer, and the amount of any such allowance or charge shall be computed as if the receiving company had been carrying on the trade since the transferring company began to do so and as if everything done to or by the transferring company had been done to or by the receiving company.

(c) This subsection shall not apply as respects assets transferred in the course of a transfer if in consequence of the transfer, or a transaction of which the transfer is a part, the Corporation Tax Acts are to apply subject to subsections (6) to (9) of section 400.

(3) For the purposes of the Capital Gains Tax Acts and, in so far as they apply to chargeable gains, the Corporation Tax Acts—

(a) the transfer shall not be treated as involving any disposal by the transferring company, and

(b) the receiving company shall be treated as if the assets transferred to it in the course of the transfer were acquired by it at the same time and for the same consideration at which they were acquired by the transferring company and as if all things done by the transferring company relating to the assets transferred in the course of the transfer had been done by the receiving company.

(4) Where, at any time within a period of 6 years commencing on the day on which the assets were transferred in the course of the transfer, the transferring company disposes of the new assets then, for the purposes of the Capital Gains Tax Acts and, in so far as they apply to chargeable gains, the Corporation Tax Acts, in computing any chargeable gain on the disposal of any new assets—

(a) the aggregate of the chargeable gains less allowable losses which but for subsection (3)(a) would have been chargeable on the transferring company 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 securities which comprise the new assets are not all of the same type, the apportionment between the securities under paragraph (a) shall be in accordance with their market value at the time they were acquired by the transferring company.

(5) Subsections (2) to (4) shall not apply if—

(a) immediately after the time of the transfer—

(i) the assets transferred in the course of the transfer are not used for the purposes of a trade carried on by the receiving company in the State,

(ii) the receiving company would not be chargeable to corporation tax or capital gains tax in respect of any chargeable gains accruing to it on a disposal, if it were to make such a disposal, of any assets (other than cash) acquired in the course of the transfer, or

(iii) any of the assets are assets in respect of which, by virtue of being of a description specified in a bilateral agreement, the receiving company is to be regarded as not liable in the State to corporation tax or capital gains tax on gains accruing to it on a disposal,

or

(b) the transferring company and the receiving company jointly so elect by notice in writing to the inspector, and such notice shall be made by the time by which a return is to be made by the transferring company under section 951 for the accounting period in which the transfer takes place.