

Schemes to avoid liability to tax under Schedule F. FA89 s88(1) to (7) 817.—(1) (a) In this section—

“appeal” means an appeal made in accordance with section 933;

“close company” has the same meaning as it has, by virtue of sections 430 and 431, for the purposes of the Corporation Tax Acts;

“market value” shall be construed in accordance with section 548;

“new consideration” has the same meaning as in section 135;

“shares” includes loan stock, debentures and any interest or rights in or over, or any option in relation to, shares, loan stock or debentures, and references to “shareholder” shall be construed accordingly.

(b)(i) For the purposes of this section, there shall be a disposal of shares by a shareholder where the shareholder disposes of shares or is treated under the Capital Gains Tax Acts as disposing of shares, and references to a disposal of shares shall include references to a part disposal of shares within the meaning of those Acts.

(ii) Where under any arrangement between a close company (in this subparagraph referred to as “the first-mentioned company”) and its, or some of its, shareholders (being any arrangement similar to an arrangement entered into for the purposes of or in connection with a scheme of reconstruction or amalgamation) another close company issues shares to those shareholders in respect of or in proportion to (or as nearly as may be in proportion to) their holdings of shares in the first-mentioned company, but the shares in the first-mentioned company are either retained by the shareholders or are cancelled, then, those shareholders shall for the purposes of this section be treated as making a disposal or a part disposal, as the case may be, of the shares in the first-mentioned company in exchange for those shares held by them in consequence of such arrangement.

(c) For the purposes of this section, the interest of a shareholder in a trade or business shall not be significantly reduced following a disposal of shares, or the carrying out of a scheme or arrangement of which the disposal of shares is a part, only if at any time after the disposal the percentage of—

(i) the ordinary share capital of the close company carrying on the trade or business at such time which is beneficially owned by the shareholder at such time,

(ii) any profits, which are available for distribution to equity holders, of the close company carrying on the trade or business at such time to which the shareholder is beneficially entitled at such time, or

(iii) any assets, available for distribution to equity holders on a winding up, of the close company

carrying on the trade or business at such time to which the shareholder would be beneficially entitled at such time on a winding up of the close company, is not significantly less than the percentage of that ordinary share capital or those profits or assets, as the case may be, of the close company carrying on the trade or business at any time before the disposal—

(I) which the shareholder beneficially owned, or

(II) to which the shareholder was beneficially entitled,

at such time before the disposal, and sections 413 to 415 and section 418 shall apply, but without regard to section 411 (1)(c) in so far as it relates to those sections, with any necessary modifications, to the determination for the purposes of this paragraph of the percentage of share capital or other amount which a shareholder beneficially owns or is beneficially entitled to, as they apply to the determination for the purposes of Chapter 5 of Part 12 of the percentage of any such amount which a company so owns or is so entitled to.

(d) The value of any amount received in money's worth shall for the purposes of this section be the market value of the money's worth at the time of its receipt.

(2) This section shall apply for the purposes of counteracting any scheme or arrangement undertaken or arranged by a close company, or to which the close company is a party, being a scheme or arrangement the purpose of which, or one of the purposes of which, is to secure that any shareholder in the close company avoids or reduces a charge or assessment to income tax under Schedule F by converting into a capital receipt of the shareholder any amount which would otherwise be available for distribution by the close company to the shareholder by means of a dividend.

(3) Subject to subsection (7), this section shall apply to a disposal of shares in a close company by a shareholder if, following the disposal or the carrying out of a scheme or arrangement of which the disposal is a part, the interest of the shareholder in any trade or business (in this section referred to as “the specified business”) which was carried on by the close company at the time of the disposal, whether or not the specified business continues to be carried on by the close company after the disposal, is not significantly reduced.

(4) Subject to subsection (5) and notwithstanding section 130 (1) or any provision of the Capital Gains Tax Acts, the amount of—

(a) the proceeds in either or both money and money's worth received by a shareholder in respect of a disposal of shares in a close company to which this section applies, or

(b) if it is less than those proceeds, the excess of those proceeds over any consideration, being consideration which—

(i) is new consideration received by the close company for the issue of those shares, and

(ii) has not previously been taken into account for the purposes of this subsection, shall be treated

for the purposes of the Tax Acts as a distribution (within the meaning of the Corporation Tax Acts) made at the time of the disposal by the close company to the shareholder.

(5) (a) In this subsection, “capital receipt” means, as appropriate in the circumstances, any amount of either or both money and money's worth (other than shares issued by a close company carrying on the specified business) which—

(i) is received by a shareholder in respect of a disposal of shares or by reason of any act done pursuant to a scheme or arrangement of which the disposal is a part, and

(ii) apart from this section is not chargeable to income tax in the hands of the shareholder.

(b) The amount which at any time may be treated under subsection (4) as a distribution made by a close company to a shareholder in respect of any disposal of shares in the close company shall not exceed the amount of the capital receipt, or the aggregate of the amounts of the capital receipts, which at such time has or have been received by the shareholder—

(i) in respect of the disposal, or

(ii) by reason of any act done pursuant to a scheme or arrangement of which the disposal is a part.

(c) A capital receipt received by a shareholder at any time on or after the disposal shall in respect of such time result in so much of the amount mentioned in subsection (4) being treated as a distribution (which is made by the close company to the shareholder at the time of the disposal) as does not exceed the amount of the capital receipt, or the aggregate of the amounts of such capital receipts, which at such time on or after the disposal has or have been received by the shareholder.

(d) Where as a result of a shareholder having received a capital receipt a close company is treated as having made a distribution to the shareholder under subsection (4), any provision of the Income Tax Acts in respect of interest on unpaid tax shall apply for the purposes of tax due in respect of that distribution as if the tax were due and payable only from the day on which the shareholder received the capital receipt.

(6) Notwithstanding section 136 (1), where a shareholder in a close company is treated under this section as having received a distribution from the close company, the shareholder shall only be entitled to a tax credit in respect of the distribution to the extent that the close company has paid advance corporation tax in respect of the distribution in accordance with Chapter 8 of Part 6; but, where a close company would but for the application of section 162 have paid an amount or an additional amount of advance corporation tax in respect of a distribution, the close company shall be treated as having paid such an amount or additional amount of advance corporation tax in respect of the distribution for the purposes of this subsection.

(7) This section shall not apply as respects a disposal of shares in a close company by a shareholder where it is shown to the satisfaction of the inspector or, on the hearing or the rehearing of an appeal, to the satisfaction of the Appeal Commissioners or a judge of the Circuit Court, as the case may be, that the disposal was made for bona fide commercial reasons and not as part of a scheme or arrangement the purpose or one of the purposes of which was the avoidance of tax.