

Capital allowances and balancing charges in partnership cases. ITA67 s72; FA80 s17(2) 1010.—(1) The provisions of the Income Tax Acts relating to the making of capital allowances and balancing charges in charging the profits or gains of a trade shall, in relation to the several trade of a partner in a partnership, apply subject to this section.

(2) Where for any year of assessment a claim has been made as provided by subsection (9) by the precedent partner for the time being of any partnership, there shall be made to any partner in the partnership in charging the profits or gains of that partner's several trade a capital allowance in respect of any expenditure or property equal to that partner's appropriate share of any capital allowance for that year, excluding any amount carried forward from an earlier year, (in this section referred to as a "joint allowance") which, apart from any insufficiency of profits or gains, might have been made in respect of that expenditure or property in charging the profits or gains of the partnership trade if the Income Tax Acts had provided that those profits should be charged by joint assessment on the persons carrying on the trade in the year of assessment as if—

(a) those persons had at all times been carrying on the trade and everything done to or by their predecessors in, or in relation to, the carrying on of the trade had been done to or by them, and

(b) the trade had been set up or commenced at the beginning of the relevant period and, where the relevant period has come to an end, had been permanently discontinued at the end of that period.

(3) There shall be made for any year of assessment on any partner in a partnership in charging the profits or gains of that partner's several trade a balancing charge equal to that partner's appropriate share of any balancing charge (in this section referred to as a "joint charge") which would have been made for that year in charging the profits or gains of the partnership trade if the Income Tax Acts had provided that those profits should be charged as specified in subsection (2).

(4) Where at the end of the relevant period a person or a partnership of persons succeeds to a partnership trade and any property which immediately before the succession takes place was in use for the purposes of the partnership trade and, without being sold, is immediately after the succession takes place in use for the purposes of the trade carried on by the successor or successors, section 313 (1) shall apply as it applies where by virtue of section 69 a trade is to be treated as discontinued.

(5) Where for a partnership trade the relevant period began at some time before the 6th day of April, 1965, and the trade was not treated for the purposes of income tax as having been set up or commenced at that time, the relevant period shall for the purposes of subsections (2) and (3) be deemed to have begun at the time at which the trade was treated for the purposes of income tax as having been set up or commenced.

(6) (a) In relation to any partnership trade, the total amount of all joint allowances for any year of assessment and the total amount of all joint charges for that year shall, subject to section 1012, be determined by the inspector.

(b) Where after a determination has been made under paragraph (a) the inspector becomes aware of any

facts or events by reference to which the determination is in his or her opinion incorrect, the inspector may from time to time and as often as appears to him or her to be necessary make a revised determination, and any such revised determination shall supersede any earlier determination and any such additional assessments or repayments of tax shall be made as may be necessary.

(7) (a) In this subsection, “trading period” means, where the relevant period begins or ends during the year of assessment for which the joint allowance or joint charge is computed, the part of that year of assessment which falls within the relevant period or, in any other case, that year of assessment.

(b) Subject to paragraph (c), for any year of assessment the partners' appropriate shares of a joint allowance or of a joint charge shall be determined by apportioning the full amount of that allowance or charge between the partners on the same basis as a like amount of profits arising in the trading period from the partnership trade, and accruing from day to day over that period, would be apportioned in accordance with the terms of the partnership if any salary, interest on capital or other sum to which any partner was entitled without regard to the amount of the profits arising from the partnership trade had already been provided for.

(c) Where for any year of assessment all the partners (any deceased partner being represented by his or her legal representatives) allege, by notice in writing signed by them and sent to the inspector within 24 months after the end of the year of assessment, that hardship is caused to one or more partners by the apportionment of a joint allowance or joint charge on the basis set out in paragraph (b), the Revenue Commissioners may, on being satisfied that hardship has been caused, give such relief as in their opinion is just by making a new apportionment of the joint allowance or joint charge, and any such new apportionment shall for the purposes of the Income Tax Acts apply as if it were an apportionment made under paragraph (b), and such additional assessments or repayments of tax shall be made as may be necessary.

(8) (a) In this subsection, “capital allowance brought forward” means—

(i) any capital allowance or part of a capital allowance due to be made to the partnership for the year 1964-75 or any earlier year of assessment which might, if Part VIII of the Finance Act, 1965, had not been enacted, have been carried forward and made as a deduction in charging the profits or gains of the partnership trade for the year 1965-76, and

(ii) any capital allowance or part of a capital allowance due to be made to a partner for the year 1965-76 or a later year of assessment which but for this subsection might have been carried forward and made as a deduction in charging the profits or gains of the several trade of the partner for a year of assessment subsequent to that for which the capital allowance was computed.

(b) For any year of assessment the aggregate amount of all capital allowances brought forward shall for the purposes of making the assessments on the partners be deemed to be a joint allowance for that year, and subsection (7) shall apply accordingly.

(9) In relation to a partnership trade—

(a) any claim for a joint allowance for any year of assessment shall be made by the precedent partner as

if it were a claim for a capital allowance to be made to that partner and shall be included in the return delivered by that partner under section 880 in relation to that year of assessment, and

(b) any claim for a joint allowance shall be deemed to be a claim by every partner for a capital allowance to be made to such partner, being a capital allowance equal to such partner's appropriate share of that/joint allowance.