

Company reconstructions without change of ownership. CTA76 s20 400.—(1) For the purposes of this section—

(a) a trade carried on by 2 or more persons shall be treated as belonging to them in the shares in which they are entitled to the profits of the trade;

(b) a trade or interest in a trade belonging to any person as trustee (otherwise than for charitable or public purposes) shall be treated as belonging to the persons for the time being entitled to the income under the trust;

(c) a trade or interest in a trade belonging to a company shall, where the result of so doing is that subsection (5) or (10) applies in relation to an event, be treated in any of the ways permitted by subsection (2).

(2) For the purposes of this section, a trade or interest in a trade which belongs to a company engaged in carrying on the trade may be regarded—

(a) as belonging to the persons owning the ordinary share capital of the company and as belonging to those persons in proportion to the amount of their holdings of that capital, or

(b) in the case of a company which is a subsidiary company, as belonging to a company which is its parent company, or as belonging to the persons owning the ordinary share capital of that parent company, and as belonging to those persons in proportion to the amount of their holdings of that capital,

and any ordinary share capital owned by a company may, if any person or body of persons has the power to secure by means of the holding of shares or the possession of voting power in or in relation to any company, or by virtue of any power conferred by the articles of association or other document regulating any company, that the affairs of the company owning the share capital are conducted in accordance with that person's or that body of persons' wishes, be regarded as owned by that person or body of persons having that power.

(3) For the purposes of subsection (2)—

(a) references to ownership shall be construed as references to beneficial ownership;

(b) a company shall be deemed to be a subsidiary of another company if and so long as not less than 75 per cent of its ordinary share capital is owned by that other company, whether directly or through another company or other companies, or partly directly and partly through another company or other companies;

(c) the amount of ordinary share capital of one company owned by a second company through another company or other companies, or partly directly and partly through another company or other companies, shall be determined in accordance with subsections (5) to (10) of section 9;

(d) where any company is a subsidiary of another company, that other company shall be considered as its parent company unless both are subsidiaries of a third company.

(4) In determining for the purposes of this section whether or to what extent a trade belongs at different times to the same persons, persons who are relatives of one another and the persons from time to time entitled to the income under any trust shall respectively be treated as a single person, and for this purpose “relative” means husband, wife, ancestor, lineal descendant, brother or sister.

(5) (a) Where, on a company (in this section referred to as “the predecessor”) ceasing to carry on a trade, another company (in this section referred to as “the successor”) begins to carry on the trade and—

(i) on or at any time within 2 years after that event, the trade or an interest amounting to not less than a 75 per cent share in the trade belongs to the same persons as the trade or such an interest belonged to at some time within a year before that event, and

(ii) the trade is not, within the period taken for the comparison under subparagraph (i), carried on otherwise than by a company within the charge to tax in respect of the trade,

then, the Corporation Tax Acts shall apply subject to subsections (6) to (9).

(b) In subparagraphs (i) and (ii) of paragraph (a), references to the trade shall apply also to any other trade of which the activities comprise the activities of the first-mentioned trade.

(6) The trade shall not be treated as permanently discontinued nor a new trade as set up and commenced for the purpose of the allowances and charges provided for by sections 307 and 308; but there shall be made to or on the successor in accordance with those sections all such allowances and charges as would, if the predecessor had continued to carry on the trade, have been made to or on the predecessor, and the amount of any such allowance or charge shall be computed as if the successor had been carrying on the trade since the predecessor began to do so and as if everything done to or by the predecessor had been done to or by the successor (but so that no sale or transfer which on the transfer of the trade is made to the successor by the predecessor of any assets in use for the purpose of the trade shall be treated as giving rise to any such allowance or charge).

(7) The predecessor shall not be entitled to relief under section 397 except as provided by subsection (9) and, subject to any claim made by the predecessor under section 396 (2), the successor shall be entitled to relief under section 396 (1), as for a loss sustained by the successor in carrying on the trade, for any amount for which the predecessor would have been entitled to claim relief if the predecessor had continued to carry on the trade.

(8) Any securities within the meaning of section 748 which, at the time when the predecessor ceases to carry on the trade, form part of the trading stock belonging to the trade shall be treated for the purposes of that section as having been sold at that time in the open market by the predecessor and as having been purchased at that time in the open market by the successor.

(9) On the successor ceasing to carry on the trade—

(a) if the successor does so within 4 years of succeeding to the trade, any relief which might be given to the successor under section 397 on the successor ceasing to carry on the trade may, in so far as that

relief cannot be given to the successor, be given to the predecessor as if the predecessor had incurred the loss (3)), and

(b) if the successor ceases to carry on the trade within one year of succeeding to the trade, relief may be given to the predecessor under section 397 in respect of any loss incurred by the predecessor (3));

but, for the purposes of section 397 as it applies by virtue of this subsection to the giving of relief to the predecessor, the predecessor shall be treated as ceasing to carry on the trade when the successor does so.

(10) Where the successor ceases to carry on the trade within the period taken for the comparison under subsection (5)(a)(i) and, on its doing so, a third company begins to carry on the trade, then, no relief shall be given to the predecessor by virtue of subsection (9) by reference to that event; but, subject to that, subsections (6) to (9) shall apply both in relation to that event (together with the new predecessor and successor) and to the earlier event (together with the original predecessor and successor), but so that—

(a) in relation to the earlier event, “successor” shall include the successor at either event, and

(b) in relation to the later event, “predecessor” shall include the predecessor at either event,

and, if the conditions of this subsection are thereafter again satisfied, this subsection shall apply again in the like manner.

(11) Where, on a company ceasing to carry on a trade, another company begins to carry on the activities of the trade as part of its trade, that part of the trade carried on by the successor shall for the purposes of this subsection be treated as a separate trade, if the effect of so treating it is that subsection (5) or (10) applies to that event in relation to that separate trade, and where, on a company ceasing to carry on part of a trade, another company begins to carry on the activities of that part as its trade or part of its trade, the predecessor shall for the purposes of this section be treated as having carried on that part of its trade as a separate trade, if the effect of so treating it is that subsection (5) or (10) applies to that event in relation to that separate trade.

(12) Where under subsection (11) any activities of a company's trade are to be treated as a separate trade on the company ceasing or beginning to carry them on, any necessary apportionment shall be made of receipts or expenses.

(13) Where by virtue of subsection (12) any sum is to be apportioned and, at the time of the apportionment, it appears that it is material as respects the liability to tax (for whatever period) of 2 or more companies, any question which arises as to the manner in which the sum is to be apportioned shall, for the purposes of the tax of all those companies, be determined by the Appeal Commissioners who shall determine the question in the like manner as if it were an appeal against an assessment, and the provisions of the Income Tax Acts relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law shall apply accordingly with any necessary modifications, and all those companies shall be entitled to appear before and be heard by the Appeal Commissioners or to make representations to them in writing.

(14) Any relief to be given under this section by means of discharge or repayment of tax shall be given on the making of a claim.