

Transfer of shares held by certain societies to members of society. FA93 s 35(1)(a) and (2) to (6); FA97 s146(1) and Sch9 Ptl par17(2) 701.—(1) In this section—

“company” has the meaning assigned to it by section 5 (1);

“consideration” means consideration in money or money's worth;

“control”, in relation to a company, shall be construed in accordance with section 432;

“society” means a society registered under the Industrial and Provident Societies Acts, 1893 to 1978, which is an agricultural society or a fishery society within the meaning of section 443 (16).

(2) (a) In this subsection and in subsection (4), “the appropriate number”, in relation to a member's original shares, means such portion (or as near as may be to such portion) of the total number of the referable shares owned by the member at the time of the transfer as bears to that number the same proportion as the total number of shares in the company which are subject to the transfer bears to the total number of shares in the company owned by the society immediately before the transfer, and the number of the referable shares owned by a member shall be an amount determined by the formula—

$$A \times B \text{ ————— } C \times D / B$$

where—

A is the market value of the shares in the company owned by the society immediately before the transfer,

B is the total number of the shares in the society in issue immediately before the transfer,

C is the market value of the total assets (including the shares in the company) of the society immediately before the transfer, and

D is the number of shares in the society owned by the member immediately before the transfer.

(b) Where on or after the 6th day of April, 1993, a society, being a society which at any time on or after that date controls or has had control of a company, transfers to the members of the society shares owned by it in the company (in this section referred to as “the transfer”) and—

(i) the transfer, in so far as it relates to any member, is in respect of and in proportion to, or as nearly as may be in proportion to, that member's holding of shares (in this section referred to as “the original shares”) in the society immediately before the transfer,

(ii) no consideration (apart from the consideration given by the members represented by the cancellation of the original shares referred to in subparagraph (iii)) for, or in connection with, the transfer is given to or received from any member (or any person connected with that member) by the society (or any person

connected with the society), and

(iii) on the transfer or as soon as possible after the transfer, the original shares (or the appropriate number of those shares) of each member are cancelled without any consideration (apart from the consideration given to the members represented by the transfer to the members of the shares in the company) for or in connection with such cancellation being given to or received from any member (or any person connected with that member) by the society (or any person connected with the society) and, where the original shares (or the appropriate number of those shares) have been issued to a member at different times, any cancellation of such shares shall involve those issued earlier rather than those issued later,

then, subject to subsection (5), subsections (3) and (4) shall apply.

(3) For the purposes of the Corporation Tax Acts, the transfer shall be treated as—

(a) not being a distribution within the meaning of Part 6, and

(b) being for a consideration of such amount as would secure that, for the purposes of charging the gain on the disposal by the society of the shares owned by it in the company, neither a gain nor a loss would accrue to the society.

(4) For the purposes of the Capital Gains Tax Acts—

(a) the cancellation of the original shares (or the appropriate number of those shares) shall not be treated as involving any disposal of those shares, and

(b) each member shall be treated as if the shares transferred to that member in the course of the transfer were acquired by that member at the same time and for the same consideration at which the original shares (or the appropriate number of those shares) were acquired by that member and, for the purposes of giving effect to this paragraph, where the original shares (or the appropriate number of those shares) have been issued to a member at different times, there shall be made all such apportionments as are in the circumstances just and reasonable.

(5) This section shall not apply 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 corporation tax or capital gains tax.

(6) In a case where this section applies, the society concerned shall include in the return required to be made by it under section 884 a statement of the total number of shares cancelled in accordance with subsection (2)(b)(iii).