

Averaging of farm profits. FA74 s16(1) to (2) and (4) to (5) and s20B (apart from proviso to subsection (2)(b)); FA75 s14(1)(a) and (b); FA77 s10; FA81 s10; FA83 s120 and Sch4; FA90 s20(2); FA97 s146(2) and Sch9 PtlI 657.—(1) In this section—

“an individual to whom subsection (1) applies” means an individual carrying on farming in a year of assessment and—

(a) who at any time in the year of assessment is also carrying on either solely or in partnership another trade or profession,

(b) whose spouse, in a case where the individual is a married person, is at any time in the year of assessment also carrying on either solely or in partnership another trade or profession, other than a trade consisting solely of the provision of accommodation in buildings on the farm land occupied by the individual, the provision of such accommodation being ancillary to the farming of that farm land,

(c) who at any time in the year of assessment is a director of a company carrying on a trade or profession and is either the beneficial owner of, or able, either directly or through the medium of other companies or by any other means, to control, more than 25 per cent of the ordinary share capital of the company, or

(d) whose spouse, in a case where the individual is a married person, is at any time in the year of assessment a director of a company carrying on a trade or profession and is either the beneficial owner of, or able, either directly or through the medium of other companies or by any other means, to control, more than 25 per cent of the ordinary share capital of the company,

but paragraphs (b) and (d) shall not apply in a case where the wife of an individual is treated for tax purposes as not living with her husband;

“company” means a company within the meaning of the Companies Act, 1963 ;

“director” includes a person holding any office or employment under a company.

(2) The definition of “an individual to whom subsection (1) applies” shall apply in the case of a married person whose wife is carrying on farming, and shall apply in such a case as if the references to the individual were references to the individual's wife.

(3) For the purposes of paragraphs (c) and (d) of the definition of “an individual to whom subsection (1) applies”, ordinary share capital which is owned or controlled in the manner referred to in those paragraphs by a person, being the spouse or a minor child of a director, or by the trustee of a trust for the benefit of a person or persons, being or including any such person or such director, shall be deemed to be owned or controlled by such director and not by any other person.

(4) (a) Subject to paragraph (b), where an assessment in respect of profits or gains from farming is

made for any year of assessment on an individual, other than an individual to whom subsection (1) applies, the individual may on giving notice in writing to that effect to the inspector within 30 days after the date of the notice of assessment elect to be charged to income tax for that year in respect of those profits or gains in accordance with subsection (5), and—

(i) the Income Tax Acts shall apply in relation to the assessment as if the notice given to the inspector were a notice of appeal against the assessment under section 933, and

(ii) the assessment shall be amended as necessary so as to give effect to the election so made by the individual.

(b) This subsection shall not apply as respects any year of assessment where for either of the 2 immediately preceding years of assessment the individual was not charged to tax in respect of profits or gains from farming in accordance with section 65 (1).

(5) (a) An individual who is to be charged to income tax for a year of assessment in respect of profits or gains from farming in accordance with this subsection shall be so charged under Case I of Schedule D on the full amount of those profits or gains determined on a fair and just average of the profits or gains from farming of the individual in each of the 3 years ending on the date in the year of assessment to which it has been customary to make up accounts or, where it has not been customary to make up accounts, on the 5th day of April in the year of assessment.

(b) Any profits or gains arising to, and any loss sustained by, the individual in the 3 years referred to in paragraph (a) in the carrying on of farming shall be aggregated for the purposes of this subsection.

(6) (a) Subject to paragraph (b) and subsection (7), where as respects a year of assessment an individual duly elects in accordance with subsection (4), the individual shall be charged to income tax for that year and for each subsequent year of assessment in respect of profits or gains from farming in accordance with subsection (5).

(b) This subsection shall not apply for any year of assessment in which the individual—

(i) is an individual to whom subsection (1) applies, or

(ii) is not chargeable to tax on profits or gains from farming.

(7) Where for a year of assessment an individual is by virtue of subsection (6) chargeable to income tax in respect of profits or gains from farming in accordance with subsection (5) and the individual was so chargeable for each of the 3 years of assessment immediately preceding the year of assessment, he or she may, by notice in writing given to the inspector with the return required under section 951 for the year of assessment, elect to be charged to tax for that year of assessment in accordance with Chapter 3 of Part 4; but, where in the case of an individual subsection (6) does not apply for any year of assessment by reason of paragraph (b)(i) of that subsection, the individual shall be deemed to be entitled to elect and to have duly elected, as respects that year of assessment, in accordance with this subsection.

(8) Where as respects a year of assessment an individual duly elects or is deemed to have elected in accordance with subsection (7)—

(a) the individual shall be charged to income tax for that year and for each subsequent year of assessment in accordance with Chapter 3 of Part 4, and

(b) there shall be made such assessment or assessments, if any, as may be necessary to secure that the amount of profits or gains from farming on which the individual is charged for each of the 2 years of assessment immediately preceding the year preceding the year of assessment, as respects which the individual elects or is deemed to have elected in accordance with subsection (7), shall be not less than the amount on which the individual is charged by virtue of subsection (6) in accordance with subsection (5) for the year preceding the year of assessment.

(9) In determining for any year of assessment what capital allowances, balancing allowances or balancing charges are to be made to or on an individual in taxing a trade of farming in accordance with subsection (5), the individual shall be deemed to be chargeable for that year of assessment in respect of the profits or gains of the trade in accordance with section 65 (1).

(10) Nothing in this section shall prejudice or restrict the operation of section 67 in any case where a trade of farming is permanently discontinued.

(11) Where for any year of assessment a loss is aggregated with profits or gains in accordance with subsection (5)(b) and the amount of the loss is in excess of the profits or gains, one-third of the amount of such excess shall be deemed for the purposes of Chapter 1 of Part 12 to be a loss sustained in the trade of farming in the final year of the 3 years on the average of the profits or gains of which the individual is to be charged to tax for that year of assessment, and any loss so aggregated shall not be eligible for relief under any provision of the Income Tax Acts apart from this subsection.

(12) The profits or gains from farming on which an individual is to be charged to tax for any year of assessment by virtue of subsection (6) in accordance with subsection (5) shall be deemed to be the profits or gains from farming of that individual in determining his or her total income for that year for the purposes of the Income Tax Acts apart from this section, and any provision of those Acts relating to the delivery of any return, account (including balance sheet), statement, declaration, book, list or other document or the furnishing of any particulars shall apply as if this section had not been enacted.