

Replacement of business and other assets. CGTA75 s28; CGT(A)A78 s9 597.—(1) In this section, “farming”, “trade”, “profession”, “office” and “employment” have the same meanings respectively as in the Income Tax Acts, but not so as to apply the provisions of those Acts as to the circumstances in which, on a change in the persons carrying on a trade, a trade is to be regarded as discontinued or as set up and commenced, and “a trade of dealing in or developing land” shall include a business of dealing in or developing land regarded as a trade under those Acts.

(2) This section shall apply with the necessary modifications in relation to—

(a) the discharge of the functions of a public authority,

(b) the occupation of woodlands where the woodlands are managed by the occupier on a commercial basis and with a view to the realisation of profits,

(c) a profession, office or employment,

(d) such of the activities of a body of persons whose activities are carried on otherwise than for profit and are wholly or mainly directed to the protection or promotion of the interests of its members in the carrying on of their trade or profession as are so directed,

(e) the activities of a body of persons, being a body not established for profit whose activities are wholly or mainly carried on otherwise than for profit, but in the case of assets within subsection (3)(b) only if they are both occupied and used by the body and in the case of other specified assets only if they are used by the body,

(f) such of the activities of a body of persons established for the sole purpose of promoting athletic or amateur games or sports as are directed to that purpose, and

(g) farming,

as it applies in relation to a trade.

(3) The following shall be assets for the purpose of this section—

(a) plant or machinery;

(b) except where the trade is a trade of dealing in or developing land, or of providing services for the occupier of land in which the person carrying on the trade has an estate or interest—

(i) any building or part of a building and any permanent or semi-permanent structure in the nature of a building occupied (as well as used) only for the purposes of the trade,

(ii) any land occupied (as well as used) only for the purposes of the trade, provided that where the

trade is a trade of dealing in or developing land, but a profit on the sale of any land held for the purposes of the trade would not form part of the trading profits, the trade shall be treated for the purposes of this subsection as if it were not a trade of dealing in or developing land;

(c) goodwill.

(4) (a) Where—

(i) the consideration which a person carrying on a trade obtains for the disposal of, or of that person's interest in, assets (in this section referred to as “the old assets”) used only for the purposes of the trade throughout the period of ownership is applied by that person in acquiring other assets, or an interest in other assets (in this section referred to as “the new assets”),

(ii) the new assets on their acquisition are taken into use and used only for the purposes of the trade, and

(iii) the old assets and the new assets are assets of a kind specified in subsection (3),

then, the person carrying on the trade shall on making a claim in that behalf be treated for the purposes of the Capital Gains Tax Acts as if the chargeable gain accruing on the old assets did not accrue until that person ceases to use the new assets for the purposes of the trade.

(b) Where the consideration for the disposal of the new assets is applied in acquiring other new assets which on the acquisition are taken into use and used only for the purposes of the trade and are assets specified in subsection (3), then, the person carrying on the trade shall be treated as if the chargeable gain accruing on the disposal of the old assets did not accrue until that person ceases to use the other new assets for the purposes of the trade and any further new assets which are acquired in a similar manner, taken into use, and used only, for the purposes of the trade and are assets specified in subsection (3).

(5) Subsection (4) shall not apply if part only of the amount or value of the consideration for the disposal of or of the interest in the old assets is applied as described in that subsection, but if all of the amount or value of the consideration except for a part which is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal of or of the interest in the old assets is so applied, then, the person carrying on the trade shall on making a claim in that behalf be treated for the purposes of the Capital Gains Tax Acts as if the amount of the gain accruing on the disposal of the old assets were reduced to the amount of consideration not applied in the acquisition of the new assets (and if not all chargeable gain with a proportionate reduction in the amount of the chargeable gain) and the balance of the gain (or chargeable gain) shall be treated as if it did not accrue until that person ceases to use the new assets for the purposes of the trade.

(6) A chargeable gain or the balance of a chargeable gain which under subsection (4) or (5), as may be appropriate, is treated as accruing on a date later than the date of the disposal on which it accrued shall not be so treated for the purposes of section 556.

(7) This section shall apply only if the acquisition of or of the interest in the new assets takes

place, or an unconditional contract for the acquisition is entered into, in the period beginning 12 months before and ending 3 years after the disposal of or of the interest in the old assets, or at such earlier or later time as the Revenue Commissioners may by notice in writing allow; but, where an unconditional contract for the acquisition is so entered into, this section may be applied on a provisional basis without waiting to ascertain whether the new assets are, or the interest in the new assets is, acquired in pursuance of the contract, and when that fact is ascertained all necessary adjustments shall be made by making assessments or by repayment or discharge of tax, and shall be so made notwithstanding any limitation in the Capital Gains Tax Acts on the time within which assessments may be made.

(8) This section shall not apply unless the acquisition of or of the interest in the new assets was made for the purpose of their use in the trade, and not wholly or partly for the purpose of realising a gain from the disposal of or of the interest in the new assets.

(9) Where over the period of ownership or any substantial part of the period of ownership part of a building or structure is, and part is not, used for the purposes of a trade, this section shall apply as if the part so used, together with any land occupied for purposes ancillary to the occupation and use of that part of the building or structure, were a separate asset, and subject to any necessary apportionments of consideration for an acquisition or disposal of or of an interest in the building or structure and other land.

(10) Where the old assets were not used for the purposes of the trade throughout the period of ownership, this section shall apply as if a part of the asset representing its use for the purposes of the trade, having regard to the time and extent to which it was and was not used for those purposes, were a separate asset which had been wholly used for the purposes of the trade, and this subsection shall apply in relation to that part subject to any necessary apportionment of consideration for an acquisition or disposal of or of the interest in the asset.

(11) (a) This section shall apply in relation to a person who carries on 2 or more trades which are in different localities, but which are concerned wholly or mainly with goods or services of the same kind, as if, in relation to the assets used for the purposes of the trades, the trades were the same trade.

(b) This section shall apply in relation to a person who ceases to carry on a trade or trades (in this paragraph referred to as "the old trade or trades") which the person has carried on for a period of 10 years or more and commences to carry on another trade or trades (in this paragraph referred to as "the new trade or trades") within a period of 2 years from the date on which the person ceased to carry on the old trade or trades as if, in relation to the old assets used for the purposes of one of the old trades and the new assets used for the purposes of the new trade, the 2 trades were the same trade.

(12) Without prejudice to the provisions of the Capital Gains Tax Acts providing generally for apportionments, where consideration is given for the acquisition or disposal of assets some or part of which are assets in relation to which a claim under subsection (4) or (5) applies, and some or part of which are not, the consideration shall be apportioned in such manner as is just and reasonable.