HMRC - CTM36320 - Condition C: Introduction

ITTOIA05/S396B/404A (4)

Condition C is met where the individual receiving the distribution in the winding up continues to be directly or indirectly involved with the same or similar trade or activity as the company being wound up at any time within two years from the date of the distribution.

The condition is widely drafted to prevent the rule being easily avoided by subtly changing the type of trade or activity of the company, or by changing the structure in which that trade or activity is carried out (for example by transferring the company’s trade to a partnership).

Condition C is met not only where a new company is created after the winding up of the company in question – it will apply wherever the individual receiving the distribution continues to carry on, directly or indirectly, the same or a similar activity.

Meeting Condition C does not, on its own, mean that the legislation will apply. All four of the conditions must apply, and while Condition C is deliberately wide, Condition D (the purpose test) will narrow the application of the legislation.

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