

Bill 6

CONTENTS

PART 16

CORPORATION TAX LIABILITY: MISCELLANEOUS RULES

CHAPTER 1

COMPANY RECONSTRUCTIONS WITHOUT A CHANGE OF OWNERSHIP

Introduction

- 1 Application and overview of Chapter [j4901rm]
- 2 Transfer of trade [j4901Brm]

The conditions to be met

- 3 The ownership condition [j4902rm]
- 4 Options that may be applied for the purposes of the ownership condition [j4903rm]
- 5 The tax condition [j4903Arm]

Effect of Chapter in relation to transfers to which it applies

- 6 Modified application of Chapter 2 of Part [] [j4901Arm]
- 7 Cases in which predecessor retains more liabilities than assets [j4904rm]
- 8 “L” [j4905rm]
- 9 Treatment of predecessor’s capital in calculating “L” [j4905Arm]
- 10 “A” [j4906rm]
- 11 Modified application of CAA 2001 [j4908rm]
- 12 Transfers of trades involving business of leasing plant or machinery [j4910rm]
- 13 Modified application of section 731 of ICTA [j4909rm]

Supplementary

- 14 Apportionment if part of trade treated as separate trade [j4901Crm]
- 15 Application of Chapter to further transfers of transferred trade [j4907rm]

PART 16

CORPORATION TAX LIABILITY: MISCELLANEOUS RULES

CHAPTER 1

COMPANY RECONSTRUCTIONS WITHOUT A CHANGE OF OWNERSHIP

Introduction

1 Application and overview of Chapter [j4901rm]

- (1) This Chapter applies to the transfer of a trade from one company (“the predecessor”) to another company (“the successor”) (see section 2) if—
 - (a) the ownership condition is met (see sections 3 and 4), and
 - (b) the tax condition is met (see section 5).

Origin: ICTA s.343(1).

- (2) The trade that is transferred is called “the transferred trade”.

Origin: Drafting.

- (3) Sections 6 to 13 set out the effect of this Chapter in relation to a transfer to which it applies.

Origin: Drafting.

- (4) Section 14 provides for the making of apportionments in cases where part of a trade is treated as a separate trade.

Origin: Drafting.

- (5) Section 15 deals with cases in which there are further transfers of the transferred trade.

Origin: Drafting.

2 Transfer of trade [j4901Brm]

- (1) There is a transfer of a trade from one company to another company if, on the first company ceasing to carry on the trade, the other company begins to carry it on.

Origin: ICTA s.343(1).

- (2) Subsection (3) applies if—

- (a) a company (“the transferor”) ceases to carry on a trade (“trade X”) and another company (“the transferee”) begins to carry on the activities of trade X as part of its trade (“part X”), and
- (b) there would have been a transfer of trade X from the transferor to the transferee had the transferee begun to carry on part X as a separate trade.

Origin: ICTA s.343(8).

- (3) This Chapter has effect as if the transferee carries on part X as a separate trade. This is subject to sections 3(4) and (5) and 5(3).

Origin: ICTA s.343(1), (8).

- (4) Subsection (5) applies if—
 - (a) a company (“the transferor”) ceases to carry on a part of a trade (“part Y”) and another company (“the transferee”) begins to carry on the activities of part Y as its trade or as part of its trade, and
 - (b) there would have been a transfer of a trade (including as a result of subsection (3)) from the transferor to the transferee had the transferor been carrying on part Y as a separate trade.

Origin: ICTA s.343(8).

- (5) This Chapter has effect as if the transferor had carried on part Y as a separate trade. This is subject to sections 3(4) and (5) and 5(3).

Origin: ICTA s.343(1), (8).

- (6) For the making of apportionments in cases where part of a trade is treated as a separate trade in accordance with subsection (3) or (5), see section 14.

Origin: Drafting.

The conditions to be met

3 The ownership condition [j4902rm]

- (1) The ownership condition is that—
 - (a) on the transfer of the transferred trade or at some time during period A, a 75% interest in the transferred trade belongs to certain persons, and
 - (b) at some time during period B, a 75% interest in the transferred trade belonged to those same persons.

“A 75% interest” means an interest amounting to a share of at least 75%.

Origin: ICTA s.343(1).

- (2) Period A is the period of two years beginning immediately after the transfer.

Origin: ICTA s.343(1).

- (3) Period B is the period of one year ending immediately before the transfer.

Origin: ICTA s.343(1).

- (4) If at any time the activities of the transferred trade are actually included in the activities of another trade, for the purposes of subsection (1) interests in the

transferred trade at that time are determined by reference to interests in the other trade.

Origin: ICTA s.343(1); drafting.

- (5) Accordingly, if at that time an interest in the other trade belongs to a person, a corresponding interest in the transferred trade is taken to belong to that person.

Origin: ICTA s.343(1); drafting.

- (6) For the purposes of this section –
- (a) if two or more companies carry on a trade, the interests in the trade belonging to them are taken to correspond to the shares of the trade's profits to which they are entitled, and
 - (b) an interest in a trade belonging to trustees (otherwise than for charitable or public purposes) is treated as belonging to the persons for the time being entitled to the income under the trust.

Origin: ICTA s.344(1); drafting.

- (7) If a company is carrying on a trade, the interest in the trade belonging to the company may be treated in accordance with any of the options set out in section 4 if that results in the ownership condition being met.

Origin: ICTA s.344(1), (2).

- (8) In determining for the purposes of this section the extent to which an interest in a trade belongs at different times to the same persons –
- (a) the persons from time to time entitled to the income under a trust are treated as a single person, and
 - (b) persons who are relatives of one another are treated as a single person. “Relative” means spouse, civil partner, ancestor, lineal descendant, brother or sister.

Origin: ICTA s.344(4).

4 Options that may be applied for the purposes of the ownership condition [j4903rm]

- (1) The options referred to in subsection (7) of section 3 are as follows. “The trading company” means the company to which the interest in the trade belongs as mentioned in that subsection.

Option 1

The interest in the trade is taken to belong to the persons owning the ordinary share capital of the trading company in proportion to the amount of their holdings of that capital.

Option 2

This option can be applied if the trading company is the subsidiary of another company (see subsection (2)).

The interest in the trade is taken to belong to –

- (a) a company that is a parent company of the trading company (see subsection (3)), or

- (b) the persons owning the ordinary share capital of such a parent company in proportion to the amount of their holdings of that capital.

Option 3

This option can be applied if –

- (a) a person (“P”) has management control over a company (see subsections (4) and (5)), and
- (b) by applying Option 1 or 2 an interest in the trade can be taken to belong to that company.

That interest in the trade is instead taken to belong to P.

Origin: ICTA s.344(2); drafting.

- (2) A company (“company A”) is a subsidiary of another company (“company B”) if at least 75% of company A’s ordinary share capital is owned by company B.

Origin: ICTA s.344(3).

- (3) If company A is the subsidiary of company B, company B is a parent company of company A unless both are subsidiaries of a third company.

Origin: ICTA s.344(3).

- (4) A person has management control over a company if the person has the power to secure that the affairs of the company are conducted in accordance with the wishes of the person.

Origin: ICTA s.344(2).

- (5) “Power” means power resulting from –
- (a) the holding of shares or the possession of voting rights in or in relation to any company, or
- (b) a document regulating any company.

Origin: ICTA s.344(2).

- (6) In this section references to a person owning ordinary share capital are to be read, if the person is a company, as references to the company owning the capital –

- (a) directly,
- (b) through another company or companies, or
- (c) partly directly and partly through another company or companies.

Origin: ICTA s.344(3); drafting.

- (7) If a company owns ordinary share capital as mentioned in subsection (6)(b) or (c), the amount of the capital owned by the company is determined in accordance with [section 838(5) to (10) of ICTA].

Origin: ICTA s.344(3).

- (8) In this section references to ownership are references to beneficial ownership.

Origin: ICTA s.344(3).

5 The tax condition [j4903Arm]

- (1) The tax condition is that, in the period mentioned in subsection (2), the transferred trade is carried on only by companies within the charge to corporation tax in respect of the trade.

Origin: ICTA s.343(1); drafting.

- (2) That period is the period –
- (a) beginning with the latest time at which the requirement of section 3(1)(b) is met for the purposes of the ownership condition, and
 - (b) ending with the earliest time at which the requirement of section 3(1)(a) is met for the purposes of that condition.

Origin: ICTA s.343(1); drafting.

- (3) If at any time the activities of the transferred trade are actually included in the activities of another trade, subsection (1) applies in relation to that time as if references to the transferred trade were references to the other trade.

Origin: ICTA s.343(1); drafting.

Effect of Chapter in relation to transfers to which it applies

6 Modified application of Chapter 2 of Part [] [j4901Arm]

- (1) If this Chapter applies to a transfer of a trade, Chapter 2 of Part [] (relief for trade losses) has effect subject to subsections (2) and (3).

Origin: ICTA s.343(1); drafting.

- (2) Section {j4506rm} (terminal losses: extension of periods for which relief may be given) does not apply in relation to loss made by the predecessor in the transferred trade.

Origin: ICTA s.343(4A).

- (3) Relief under section {j4513rm} (carry forward of trade loss against subsequent trade profits) is given to the successor in relation to loss –
- (a) which is made by the predecessor in the transferred trade, and
 - (b) for which relief would have been given under that section to the predecessor had it continued to carry on that trade.

This is subject to section 7.

Origin: ICTA s.343(3).

7 Cases in which predecessor retains more liabilities than assets [j4904rm]

- (1) This section applies if L (see section 8) exceeds A (see section 10).

Origin: ICTA s.343(4).

- (2) The relief to be given to the successor as a result of section 6(3) is limited to –

R – E

where –

R is the total amount of loss for which relief could be given to the successor as a result of section 6(3), ignoring this section, and

E is the amount by which L exceeds A.

Origin: ICTA s.343(4).

- (3) If R does not exceed E, no relief is to be given to the successor.

Origin: ICTA s.343(4).

8 “L” [j4905rm]

- (1) L is the amount of outstanding liabilities vested in the predecessor immediately before the transfer of the transferred trade so far as those liabilities are not transferred to the successor on that transfer.

Origin: ICTA s.344(6), (7).

- (2) Subsection (3) applies for the purposes of subsection (1) if—
- (a) the predecessor transfers a liability to the successor, and
 - (b) the creditor in question agrees to accept settlement of part of the liability as settlement for the whole of it.

Origin: ICTA s.344(8).

- (3) The transfer of the liability is taken to cover only the part of the liability mentioned in subsection (2)(b).

Origin: ICTA s.344(8).

- (4) For the purposes of subsection (1) a liability is ignored if—
- (a) the predecessor was the predecessor on a previous application of this Chapter, and
 - (b) on that application the liability was apportioned under section 14 to a trade carried on by the company that was the successor on that application.

Origin: ICTA s.344(6).

- (5) If the transferred trade is treated as a separate trade in accordance with section 2(5), in subsection (1) the references to liabilities are to be read as references to liabilities apportioned to the separate trade under section 14.

Origin: Drafting.

- (6) In subsection (1) the references to liabilities also need to be read with section 9.

Origin: Drafting.

9 Treatment of predecessor’s capital in calculating “L” [j4905Arm]

- (1) The predecessor’s capital is treated as a liability vested in the predecessor for the purposes of section 8(1) so far as it is recently converted capital.

Origin: ICTA s.344(9).

- (2) Otherwise, none of the predecessor’s capital is such a liability for the purposes of section 8(1).

Origin: ICTA s.344(6).

- (3) “The predecessor’s capital” means the predecessor’s share capital, share premium account, reserves and relevant loan stock.

Origin: ICTA s.344(6), (9).

- (4) “Relevant loan stock” means any loan stock or similar security (whether secured or unsecured) other than any to which subsection (5) applies.

Origin: ICTA s.344(11).

- (5) This subsection applies to any stock or security if, when the liability giving rise to the stock or security was incurred, the person who was the creditor was carrying on a trade of lending money.

Origin: ICTA s.344(12).

- (6) A part of the predecessor’s capital is recently converted capital if—
- (a) it was issued or otherwise originated on the conversion of a liability that was not part of the predecessor’s capital or on the conversion of a part of that capital that was itself recently converted capital, and
 - (b) the conversion occurred during the period of 12 months ending with the day on which the transfer of the transferred trade occurs.

Origin: ICTA s.344(9); drafting.

10 “A” [j4906rm]

- (1) A is the sum of the values of—
- (a) the assets within subsection (2), and
 - (b) the consideration given to the predecessor by the successor in relation to the transfer of the transferred trade.

Origin: ICTA s.344(5).

- (2) The assets within this subsection are the assets vested in the predecessor immediately before the transfer of the transferred trade so far as they are not transferred to the successor on that transfer.

Origin: ICTA s.344(5).

- (3) For the purposes of subsection (1)(a) the value of an asset is taken to be the price which it might reasonably be expected to have fetched on a sale in the open market immediately before the transfer of the transferred trade.

Origin: ICTA s.344(7).

- (4) Subsection (5) applies for the purposes of subsection (1)(a) if immediately before the transfer of the transferred trade—
- (a) the predecessor has relevant loan stock (see section 9(4)) that is not included in L, and
 - (b) the stock is secured on an asset of the predecessor that is not transferred to the successor on the transfer of the transferred trade.

Origin: ICTA s.344(10).

- (5) The value of the asset is reduced by the amount of the liability.

Origin: ICTA s.344(10).

- (6) For the purposes of subsection (1)(a) an asset is ignored if—

- (a) the predecessor was the predecessor on a previous application of this Chapter, and
- (b) on that application the asset was apportioned under section 14 to a trade carried on by the company that was the successor on that application.

Origin: ICTA s.344(6).

- (7) If the successor assumes a liability of the predecessor, that does not count for the purposes of subsection (1)(b) as giving consideration.

Origin: ICTA s.344(5).

- (8) If the transferred trade is treated as a separate trade in accordance with section 2(5), in subsection (1) the reference to assets is to be read as a reference to assets apportioned to the separate trade under section 14.

Origin: Drafting.

11 Modified application of CAA 2001 [\[j4908rm\]](#)

- (1) If this Chapter applies to a transfer of a trade, CAA 2001 has effect subject to subsections (2) to (6) (unless section 561 of that Act (transfer to company in another member State), or section 561A of that Act (transfer during formation of SE by merger), applies in relation to the transfer).

This is subject to section 12.

Origin: ICTA s.343(1), (2); drafting.

- (2) The transferred trade is not to be treated as permanently discontinued nor a new trade treated as begun.

Origin: ICTA s.343(2).

- (3) Subsection (4) applies in relation to assets that—
 - (a) are in use for the purposes of the transferred trade, and
 - (b) are transferred from the predecessor to the successor on the transfer of that trade.

Origin: ICTA s.343(2).

- (4) Any allowances or charges in relation to the assets are to be made to or on the successor if such allowances or charges would have been made to or on the predecessor had the predecessor continued to carry on the transferred trade.

Origin: ICTA s.343(2).

- (5) And, accordingly, the transfers of the assets do not themselves give rise to any allowances or charges.

Origin: ICTA s.343(2).

- (6) For the purposes of subsection (4)—
 - (a) the successor is treated as if it has been carrying on the transferred trade since the predecessor began to do so, and
 - (b) anything done to or by the predecessor is treated as having been done to or by the successor.

Origin: ICTA s.343(2).

12 Transfers of trades involving business of leasing plant or machinery [j4910rm]

- (1) This section applies if the transferred trade is or forms part of a business of leasing plant or machinery which the predecessor or the successor carries on on the day of the transfer of that trade (“the transfer day”).

Origin: ICTA s.343A(1).

- (2) If, on the transfer day, both the predecessor and the successor carry on the transferred trade otherwise than in partnership, section 11 does not apply unless –
- the principal company or companies of the predecessor immediately before the transfer are the same as the principal company or companies of the successor immediately afterwards, and
 - if any such principal company is a consortium principal company, the following condition is met.

Origin: ICTA s.343A(2), (5).

- (3) The condition is that the relevant fraction in relation to the predecessor immediately before the transfer is the same as the relevant fraction in relation to the successor immediately afterwards (regardless of whether the members of each consortium are the same).

Origin: ICTA s.343A(2).

- (4) If, on the transfer day, the predecessor or the successor carries on the transferred trade in partnership, section 11 does not apply unless –
- the predecessor ceases to carry on the whole of its trade, and
 - that trade is a business of leasing plant or machinery which the predecessor carries on in partnership on the transfer day.

Origin: ICTA s.343A(3).

- (5) If section 11 does not apply as a result of this section, the plant or machinery of the transferred trade is treated for the purposes of the Corporation Tax Acts as sold by the predecessor to the successor on the transfer day for its market value as at that day.

Origin: ICTA s.343A(4).

- (6) In this section –
- “business of leasing plant or machinery” –
- has the same meaning as in [Part 2 of Schedule 10 to FA 2006] (if the business is carried on otherwise than in partnership), and
 - has the same meaning as in [Part 3 of that Schedule] (if the business is carried on in partnership),
- “consortium principal company” means a company which is a principal company as a result of [paragraph 12 of that Schedule],
- “market value”, in relation to plant or machinery, is to be read in accordance with [paragraph 41(8) of that Schedule],
- “plant or machinery” has the same meaning as in Part 2 of CAA 2001,
- “principal company” is to be read in accordance with paragraph 11 or 12 (as the case may be) of [Schedule 10 to FA 2006], and
- “relevant fraction” has the same meaning as in [paragraph 12 of that Schedule].

Origin: ICTA s.343A(5).

13 Modified application of section 731 of ICTA [j4909rm]

- (1) If this Chapter applies to a transfer of a trade, section 731 of ICTA (purchase and sale of securities) has effect subject to subsection (2).

Origin: ICTA s.343(1), (5).

- (2) Any securities (as defined in that section), which at the time of the transfer of the transferred trade form part of the trading stock of that trade, are treated for the purposes of that section –
- (a) as having been sold at that time in the open market by the predecessor, and
 - (b) as having been purchased at that time in the open market by the successor.

Origin: ICTA s.343(5).

Supplementary

14 Apportionment if part of trade treated as separate trade [j4901Crm]

- (1) This section applies if, in accordance with section 2(3) or (5), part of a trade is treated as a separate trade.

Origin: ICTA s.343(9).

- (2) Just and reasonable apportionments are to be made of receipts, expenses, assets and liabilities.

Origin: ICTA s.343(9); Annex 1, Change jc604.

- (3) Subsections (4) to (8) apply if, at the time of an apportionment under this section, it appears that the apportionment is material to the liability to corporation tax (for whatever period) of two or more companies.

Origin: ICTA s.343(10); drafting.

- (4) The Commissioners who are to determine the apportionment for the purposes of the liability of those companies are as follows.

Origin: ICTA s.343(10); drafting.

- (5) If –
- (a) the same body of General Commissioners has jurisdiction in relation to all the companies, and
 - (b) the companies do not agree that the apportionment is to be determined by the Special Commissioners,
- the apportionment is to be determined by that body of General Commissioners.

Origin: ICTA s.343(10).

- (6) If –
- (a) different bodies of General Commissioners have jurisdiction in relation to the companies, and

- (b) the companies do not agree that the apportionment is to be determined by the Special Commissioners,

the apportionment is to be determined by such of those bodies of General Commissioners as an officer of Revenue and Customs may direct.

Origin: ICTA s.343(10); Annex 1, Change jc601.

- (7) Otherwise, the apportionment is to be determined by the Special Commissioners.

Origin: ICTA s.343(10).

- (8) The Commissioners must determine the apportionment in the same way as an appeal, but all the companies are entitled –

- (a) to appear before and be heard by the Commissioners, or
- (b) to make representations to them in writing.

Origin: ICTA s.343(10).

15 Application of Chapter to further transfers of transferred trade [j4907rm]

- (1) This section applies if –
 - (a) ignoring this section, this Chapter applies to a transfer of a trade (“the original transfer”), and
 - (b) after the original transfer occurred there was a transfer of the transferred trade (“the further transfer”) which –
 - (i) was from the successor for the original transfer to a third company, and
 - (ii) occurred on or before the time mentioned in section 5(2)(b) (“the relevant time”) in relation to the original transfer.

Origin: ICTA s.343(7).

- (2) This Chapter applies to the further transfer as well as to the original transfer.

Origin: ICTA s.343(7).

- (3) For this purpose –
 - (a) the successor for the original transfer is taken to be the predecessor for the further transfer, and
 - (b) the third company is taken to be the successor for the further transfer.

Origin: ICTA s.343(7).

- (4) Further –
 - (a) in the application of sections 6 to 13 in relation to the original transfer, references to the successor include references to the successor for the further transfer, and
 - (b) in the application of those sections in relation to the further transfer, references to the predecessor include references to the predecessor for the original transfer.

Origin: ICTA s.343(7).

- (5) If on or before the relevant time, the transferred trade was transferred from the successor for the further transfer to another company, subsections (2) to (4) and this subsection apply again in a like manner (and so on).

Origin: ICTA s.343(7).