



# Corporation Tax Act 2010

## 2010 CHAPTER 4

### PART 22

#### MISCELLANEOUS PROVISIONS

#### CHAPTER 1

##### TRANSFERS OF TRADE WITHOUT A CHANGE OF OWNERSHIP

##### *Introduction*

#### **[<sup>F1</sup>940A] Overview of Chapter**

- (1) This Chapter contains rules for cases where a trade is transferred between companies within the charge to tax and certain conditions as to common ownership of the trade are met.
- (2) Section [<sup>F2</sup>940B] explains when there is a transfer of a trade for the purposes of this Chapter.
- (3) Sections [<sup>F3</sup>940C] to 943 contain provision about when this Chapter applies to a transfer of a trade.
- (4) Sections 944 to 950 set out the effects of this Chapter in relation to a transfer to which it applies.
- (5) Sections 951 to 953 contain supplementary provision.

#### **Textual Amendments**

- F1** S. 940A: s. 938 renumbered as s. 940A (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 5 para. 3\(1\)\(a\)](#)
- F2** Word in s. 940A(2) substituted (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 5 para. 3\(2\)\(a\)](#)
- F3** Word in s. 940A(3) substituted (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 5 para. 3\(2\)\(b\)](#)

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## **[<sup>F4</sup>940B] Meaning of “transfer of a trade” and related expressions**

- (1) This section applies for the purposes of this Chapter.
- (2) If, on a company ceasing to carry on a trade, another company begins to carry it on, there is a transfer of a trade.
- (3) The trade that is transferred is referred to in this Chapter as “the transferred trade”.
- (4) In relation to a transfer of a trade—
  - “the predecessor” means the company which ceases to carry on the trade, and
  - “the successor” means the company which begins to carry on the trade.
- (5) In this Chapter, except in so far as the context otherwise requires—
  - (a) references to a trade include an office, and
  - (b) references to carrying on a trade include holding an office.

### **Textual Amendments**

**F4** S. 940B: s. 939 renumbered as s. 940B (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 5 para. 3\(1\)\(b\)](#)

### *Transfers to which Chapter applies*

## **[<sup>F5</sup>940C] Transfers to which Chapter applies**

This Chapter applies to a transfer of a trade if—

- (a) the ownership condition is met (see sections 941 and 942), and
- (b) the tax condition is met (see section 943).

### **Textual Amendments**

**F5** S. 940C: s. 940 renumbered as s. 940C (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), [Sch. 5 para. 3\(1\)\(c\)](#)

## **941 The ownership condition**

- (1) The ownership condition is that—
  - (a) on the transfer of the transferred trade or at some time during the period of two years beginning immediately after the transfer, a 75% interest in the transferred trade belongs to certain persons, and
  - (b) at some time during the period of one year ending immediately before the transfer, a 75% interest in the transferred trade belonged to the same persons.
- (2) In subsection (1) references to a 75% interest are to an interest amounting to a share of at least 75%.
- (3) 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.
- (4) Accordingly, a person who has an interest in the other trade at that time is taken to have a corresponding interest in the transferred trade.

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- (5) 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.
- (6) 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 942(1) if that results in the ownership condition being met.
- (7) 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.
- (8) In subsection (7) “relative” means spouse, civil partner, ancestor, lineal descendant, brother or sister.

#### **942 Options that may be applied for the purposes of the ownership condition**

- (1) The options referred to in section 941(6) are as follows (with references in the options to “the trading company” being to 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.

- (2) For the purposes of this section 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.

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- (3) If company A is a subsidiary of company B, company B is a parent company of company A unless both are subsidiaries of a third company.
- (4) For the purposes of subsection (1) 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.
- (5) “Power” in subsection (4) 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.
- (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.
- (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 sections 1155 to 1157.
- (8) In this section references to ownership are references to beneficial ownership.

#### **943 The tax condition**

- (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 or income tax in respect of the trade.
- (2) That period is the period—
  - (a) beginning with the latest time at which the requirement of section 941(1)(b) is met for the purposes of the ownership condition, and
  - (b) ending with the earliest time at which the requirement of section 941(1)(a) is met for the purposes of that condition.
- (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.

*Effect of Chapter in relation to transfers to which it applies*

#### **944 Modified application of Chapter 2 of Part 4**

- (1) If this Chapter applies to a transfer of a trade, Chapter 2 of Part 4 (relief for trade losses) has effect subject to subsections (2) and (3).
- (2) Section 39 (terminal losses: extension of periods for which relief may be given) does not apply in relation to a loss made by the predecessor in the transferred trade.
- (3) Relief under section 45 (carry forward of trade loss against subsequent trade profits) is given to the successor in relation to a loss—
  - (a) which is made by the predecessor in the transferred trade, and

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- (b) for which relief would have been given under that section to the predecessor had it continued to carry on that trade.
- (4) Subsection (3) is subject to—
  - (a) any claim made by the predecessor under section 37 (including a case where section 42 applies), and
  - (b) section 945.

#### **945 Cases in which predecessor retains more liabilities than assets**

- (1) This section applies if L exceeds A.
- (2) “L” is the amount of the predecessor's liabilities so far as they—
  - (a) are outstanding immediately before the transfer of the transferred trade, and
  - (b) are not transferred to the successor on the transfer of the trade.
- (3) “A” is the sum of the values of—
  - (a) the predecessor's assets immediately before the transfer of the transferred trade so far as they are not transferred to the successor on that transfer, and
  - (b) the consideration given to the predecessor by the successor in relation to the transfer of the transferred trade.
- (4) The relief to be given to the successor as a result of section 944(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 944(3), ignoring this section, and

E is the amount by which L exceeds A.

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

#### **946 Rules for determining “L”**

- (1) This section applies for the purposes of section 945(2) (determination of “L”).
- (2) A liability is to be ignored if—
  - (a) the predecessor was the predecessor in relation to a transfer of a trade on a previous application of this Chapter, and
  - (b) on that previous application of this Chapter the liability was apportioned under section 952 to a trade carried on by the company that was the successor on that application.
- (3) Subsection (4) applies if—
  - (a) the predecessor transfers a liability to the successor, and
  - (b) the creditor in question has agreed to accept settlement of part of the liability as settlement for the whole of it.
- (4) The transfer of the liability is taken to cover only the part of the liability mentioned in subsection (3)(b).
- (5) The predecessor's capital is to be treated as a liability of the predecessor so far as it is recently converted capital (but not otherwise).

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- (6) For the purposes of subsection (5) 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.
- (7) In this section “the predecessor's capital” means the predecessor's share capital, share premium account, reserves and relevant loan stock.
- (8) In subsection (7) “relevant loan stock” means any loan stock or similar security (whether secured or unsecured) other than any to which subsection (9) applies.
- (9) 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.

#### **947 Rules for determining “A”**

- (1) Subsections (2) to (4) apply for the purposes of section 945(3)(a) (determination of assets within “A”).
- (2) An asset is to be ignored if—
  - (a) the predecessor was the predecessor on a previous application of this Chapter, and
  - (b) on that previous application of this Chapter the asset was apportioned under section 952 to a trade carried on by the company that was the successor on that application.
- (3) The value of an asset is to be 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.
- (4) If immediately before the transfer of a trade—
  - (a) the predecessor has relevant loan stock (as defined by section 946(8)) 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 trade,
 the value of the asset is reduced by the amount of the liability.
- (5) Subsection (6) applies for the purposes of section 945(3)(b) (determination of consideration within “A”).
- (6) If the successor assumes a liability of the predecessor, that does not count as giving consideration.

#### **948 Modified application of CAA 2001**

- (1) If this Chapter applies to a transfer of a trade, CAA 2001 has effect subject to subsections (2) to (4).

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- (2) Any allowances or charges 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.
- (3) A transfer of assets from the predecessor to the successor does not of itself give rise to any allowances or charges if—
  - (a) the transfer of the assets is made on the transfer of the transferred trade, and
  - (b) the assets are in use for the purposes of that trade.
- (4) For the purpose of determining the amount of the allowances or charges mentioned in subsection (2) to be made to the successor—
  - (a) the successor is to be 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 to be treated as having been done to or by the successor.
- (5) This section is subject to sections 949 and 950.
- (6) For other cases in which this section does not apply in relation to a transfer, see—
  - [<sup>F6</sup>(za) section 398G of this Act (sale of lessors: transfers into and out of A after election under section 398A),]
  - (a) section 561 of CAA 2001 (transfer to company in another member State), and
  - (b) section 561A of that Act (transfer during formation of SE by merger).

#### Textual Amendments

**F6** S. 948(6)(za) inserted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 6 para. 24](#)

#### Modifications etc. (not altering text)

**C1** S. 948 excluded by Capital Allowances 2001 (c. 2), s. 561A(2)(c) (as substituted (with effect in accordance with s. 1184(1) of the amending Act) by [2010 c. 4](#), s. 1184(1), [Sch. 1 para. 361](#) (with [Sch. 2](#)))

### 949 Dual resident investing companies

- (1) Section 948(1) to (4) does not apply if the successor is a dual resident investing company in the transfer accounting period.
- (2) A company is a “dual resident investing company” in the transfer accounting period if the company—
  - (a) is a dual resident company in that period (see subsection (3)), and
  - (b) meets condition A, B or C (see subsections (4) to (6)).
- (3) A “dual resident company” is a company that is both UK resident and also within a charge to non-UK tax under the law of a territory because—
  - (a) it derives its status as a company from that law,
  - (b) its place of management is in that territory, or
  - (c) it is for some other reason treated under that law as resident in that territory for the purposes of that tax.

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- (4) Condition A is that the successor is not a trading company throughout the transfer accounting period.
- (5) Condition B is that in the transfer accounting period the successor carries on a trade of such a description that the company's main function, or one of its main functions, consists of one or more of the following activities.

*Activity 1*

Acquiring and holding shares, securities or investments of any other kind (whether directly or indirectly).

*Activity 2*

Making, under loan relationships, payments in relation to which debits fall to be brought into account for the purposes of Part 5 of CTA 2009.

*Activity 3*

Making payments which are qualifying charitable donations.

*Activity 4*

Making payments similar to those within Activity 3 but which are deductible in calculating the profits of the successor for corporation tax purposes.

*Activity 5*

Obtaining funds for the purposes of, or otherwise in connection with, any of Activities 1 to 4.

- (6) Condition C is that in the transfer accounting period the successor carries on one or more of Activities 1 to 5—
- (a) to an extent that does not appear to be justified by any trade which it carries on, or
  - (b) for a purpose that does not appear to be appropriate to any such trade.

- (7) In this section—

“non-UK tax” has the same meaning as in Part 5 (see section 187),

“trading company” means a company the business of which consists wholly or mainly in the carrying on of a trade or trades, and

“the transfer accounting period” means the accounting period of the successor in which the transfer of the transferred trade takes place.

## **950 Transfers of trades involving business of leasing plant or machinery**

- (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”).
- (2) If, on the transfer day, both the predecessor and the successor carry on the transferred trade otherwise than in partnership, section 948(1) to (4) does not apply unless—
- (a) 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
  - (b) if any such principal company is a consortium principal company, the following condition is met.



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

[<sup>F7</sup>(3A) For the purposes of subsection (2)(a) the principal company or companies of the predecessor immediately before the transfer are not to be regarded as the same as the principal company or companies of the successor immediately afterwards (so far as they would otherwise have been so regarded) if—

- (a) there is a relevant change in the relationship between the successor and a principal company of the successor within section 394ZA (company joining tonnage tax group), and
- (b) that change occurs on or before the transfer day (whether the change occurs on or after 21 March 2012 or before that date).]

(4) If, on the transfer day, the predecessor or the successor carries on the transferred trade in partnership, section 948(1) to (4) does not apply unless—

- (a) the predecessor ceases to carry on the whole of its trade, and
- (b) that trade is a business of leasing plant or machinery which the predecessor carries on in partnership on the transfer day.

(5) If section 948(1) to (4) 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 [<sup>F8</sup>the higher of—

- (a) its ascribed value immediately before the transfer of the trade, and
- (b) the disposal value that the predecessor would be required to bring into account under Part 2 of CAA 2001 in respect of it as a result of the transfer of the trade. ]

(6) In this section—

[<sup>F9</sup> “ ascribed value ”, in relation to plant or machinery, is to be read in accordance with section 437A (but reading the reference to the relevant company or partnership as a reference to the predecessor); ]

“business of leasing plant or machinery”—

- (a) if the business is carried on otherwise than in partnership, has the same meaning as in section 387, and
- (b) if the business is carried on in partnership, has the same meaning as in section 410,

“consortium principal company” means a company which is a principal company as a result of section 394,

<sup>F10</sup>  
...

“ownership proportion” has the same meaning as in section 394,

“plant or machinery” has the same meaning as in Part 2 of CAA 2001, and

“principal company” is to be read in accordance with section 393 or 394 (as the case may be).

#### Textual Amendments

- F7** S. 950(3A) inserted (with effect in accordance with s. 24(11) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), s. 24(7)

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- F8** Words in s. 950(5) substituted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by [Finance Act 2011 \(c. 11\), Sch. 6 para. 25\(2\)](#)
- F9** Definition “ascribed value” in s. 950(6) inserted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by [Finance Act 2011 \(c. 11\), Sch. 6 para. 25\(3\)\(a\)](#)
- F10** Definition “market value” in s. 950(6) omitted (with effect in accordance with Sch. 6 para. 27 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\), Sch. 6 para. 25\(3\)\(b\)](#)

### *Supplementary*

#### **951 Part of trade treated as separate trade**

- (1) Subsection (2) applies (subject to subsection (5)) 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.
- (2) This Chapter has effect as if the transferee carries on part X as a separate trade.
- (3) Subsection (4) applies (subject to subsection (5)) 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 (2)) from the transferor to the transferee had the transferor been carrying on part Y as a separate trade.
- (4) This Chapter has effect as if the transferor had carried on part Y as a separate trade.
- (5) Subsections (2) and (4) are to be ignored for the purposes of sections 941(3) and (4) and 943(3).
- (6) If part of a trade is treated as a separate trade in accordance with subsection (4)—
  - (a) references in section 945(2) to liabilities are to be read as references to liabilities apportioned under section 952, and
  - (b) references in section 945(3) to assets are to be read as references to assets so apportioned.

#### **952 Apportionment if part of trade treated as separate trade**

- (1) If part of a trade is treated as a separate trade in accordance with section 951(2) or (4), just and reasonable apportionments are to be made of receipts, expenses, assets and liabilities.
- (2) Subsection (3) applies if—
  - (a) at the time of an apportionment under subsection (1) it appears that the apportionment is material to the liability to tax (for whatever period) of two or more companies, and
  - (b) a question arises as to how the apportionment is to be made for the purposes of the liability of those companies.

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- (3) The question is to be determined in the same way as an appeal, and all the companies concerned are entitled to be a party to the proceedings.

### **953 Application of Chapter to further transfers of a trade**

- (1) This section applies if—
- (a) there is a transfer of a trade (“the original transfer”) that meets the ownership condition and the tax condition (see sections 941 and 943),
  - (b) after the original transfer there was a further transfer of the trade from the successor in relation to the original transfer to a third company (“the further transfer”),
  - (c) the further transfer took place at any time before the end of the period specified in subsection (7),
  - (d) the ownership condition was met in relation to the original transfer only on or after the further transfer, and
  - (e) apart from this section, this Chapter would not apply to the further transfer.
- (2) This Chapter applies to the further transfer as well as to the original transfer.
- (3) In the application of this Chapter to the further transfer—
- (a) the successor in relation to the original transfer is taken to be the predecessor in relation to the further transfer, and
  - (b) the third company is taken to be the successor in relation to the further transfer.
- (4) In the application of sections 944 to 950 in relation to the original transfer, references to the successor include references to the successor in relation to the further transfer.
- (5) In the application of those sections in relation to the further transfer, references to the predecessor include references to the predecessor in relation to the original transfer.
- (6) If, at a time before the end of the period specified in subsection (7), the transferred trade was transferred from the successor in relation to the further transfer to another company, subsections (2) to (5) and this subsection apply again in a like manner (and so on).
- (7) The period referred to above is the period—
- (a) beginning at the time when the original transfer takes place, and
  - (b) ending immediately after the earliest time when the ownership condition was met in respect of the original transfer (see section 941(1)).

**Status:**

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**Changes to legislation:**

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