



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART XVII

TAX AVOIDANCE

CHAPTER VI

MISCELLANEOUS

Change in ownership of company

767A Change in company ownership: corporation tax.

- (1) Where it appears to the Board that—
 - (a) there has been a change in the ownership of a company (“the tax-payer company”),
 - (b) any corporation tax assessed on the tax-payer company for an accounting period beginning before the change remains unpaid at any time after the relevant date, and
 - (c) any of the three conditions mentioned below is fulfilled,any person mentioned in subsection (2) below may be assessed by the Board and charged (in the name of the tax-payer company) to an amount of corporation tax in accordance with this section.
- (2) The persons are—
 - (a) any person who at any time during the relevant period before the change in the ownership of the tax-payer company had control of it;
 - (b) any company of which the person mentioned in paragraph (a) above has at any time had control within the period of three years before that change.
- (3) In subsection (2) above, “the relevant period” means—

Status: Point in time view as at 22/03/2001. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: Income and Corporation Taxes Act 1988, Cross Heading: Change in ownership of company is up to date with all changes known to be in force on or before 11 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) the period of three years before the change in the ownership of the tax-payer company; or
 - (b) if during the period of three years before that change (“the later change”) there was a change in the ownership of the tax-payer company (“the earlier change”), the period elapsing between the earlier change and the later change.
- (4) The first condition is that—
- (a) at any time during the period of three years before the change in the ownership of the tax-payer company the activities of a trade or business of that company cease or the scale of those activities become small or negligible; and
 - (b) there is no significant revival of those activities before that change occurs.
- (5) The second condition is that at any time after the change in the ownership of the tax-payer company, but under arrangements made before that change, the activities of a trade or business of that company cease or the scale of those activities become small or negligible.
- (6) The third condition is that—
- (a) at any time during the period of six years beginning three years before the change in the ownership of the tax-payer company there is a major change in the nature or conduct of a trade or business of that company;
 - (b) there is a transfer or there are transfers of assets of the tax-payer company to a person mentioned in subsection (7) below or to any person under arrangements which enable any of those assets or any assets representing those assets to be transferred to a person mentioned in subsection (7) below;
 - (c) that transfer occurs or those transfers occur during the period of three years before the change in the ownership of the tax-payer company or after that change but under arrangements made before that change; and
 - (d) the major change mentioned in paragraph (a) above is attributable to that transfer or those transfers.
- (7) The persons are—
- (a) any person mentioned in subsection (2)(a) above; and
 - (b) any person connected with him.
- (8) The amount of tax charged in an assessment made under this section must not exceed the amount of the tax which, at the time of that assessment, remains unpaid by the tax-payer company.
- (9) For the purposes of this section the relevant date is the date six months from the date on which the corporation tax is assessed as mentioned in subsection (1)(b) above.
- (10) Any assessment made under this section shall not be out of time if made within three years from the date on which the liability of the tax-payer company to corporation tax for the accounting period mentioned in subsection (1)(b) above is finally determined.

Modifications etc. (not altering text)

- C1** Ss. 767A-768E: [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), **reg. 36** to be construed as one (6.4.2006) with these sections, by virtue of that reg.

Status: Point in time view as at 22/03/2001. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: Income and Corporation Taxes Act 1988, Cross Heading: Change in ownership of company is up to date with all changes known to be in force on or before 11 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

[^{F1}767A] Change in company ownership: postponed corporation tax.

- (1) Where it appears to the Board that—
 - (a) there has been a change in the ownership of a company (“the transferred company”),
 - (b) any corporation tax relating to an accounting period ending on or after the change has been assessed on the transferred company or an associated company,
 - (c) that tax remains unpaid at any time more than six months after it was assessed, and
 - (d) the condition set out in subsection (2) below is fulfilled,any person mentioned in subsection (4) below may be assessed by the Board and charged to an amount of corporation tax not exceeding the amount remaining unpaid.
- (2) The condition is that it would be reasonable (apart from this section) to infer, from either or both of—
 - (a) the terms of any transactions entered into in connection with the change, and
 - (b) the other circumstances of the change and of any such transactions,that at least one of those transactions was entered into by one or more of its parties on the assumption, as regards a potential tax liability, that that liability would be unlikely to be met, or met in full, if it were to arise.
- (3) In subsection (2) above the reference to a potential tax liability is a reference to a liability to pay corporation tax which—
 - (a) in circumstances which were reasonably foreseeable at the time of the change in ownership, or
 - (b) in circumstances the occurrence of which is something of which there was at that time a reasonably foreseeable risk,would or might arise from an assessment made, after the change in ownership, on the transferred company or an associated company (whether or not a particular associated company).
- (4) The persons mentioned in subsection (1) above are—
 - (a) any person who at any time during the relevant period had control of the transferred company;
 - (b) any company of which the person mentioned in paragraph (a) above has at any time had control within the period of three years before the change in the ownership of the transferred company.
- (5) In subsection (4) above, “the relevant period” means—
 - (a) the period of three years before the change in the ownership of the transferred company; or
 - (b) if during the period of three years before that change (“the later change”) there was a change in the ownership of the transferred company (“the earlier change”), the period elapsing between the earlier change and the later change.
- (6) For the purposes of this section a transaction is entered into in connection with a change in the ownership of a company if—
 - (a) it is the transaction, or one of the transactions, by which that change is effected; or
 - (b) it is entered into as part of a series of transactions, or scheme, of which transactions effecting the change in ownership have formed or will form a part.

Status: Point in time view as at 22/03/2001. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: Income and Corporation Taxes Act 1988, Cross Heading: Change in ownership of company is up to date with all changes known to be in force on or before 11 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (7) For the purposes of this section—
- (a) references to a scheme are references to any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions;
 - (b) it shall be immaterial in determining whether any transactions have formed or will form part of a series of transactions or scheme that the parties to any of the transactions are different from the parties to another of the transactions; and
 - (c) the cases in which any two or more transactions are to be taken as forming part of a series of transactions or scheme shall include any case in which it would be reasonable to assume that one or more of them—
 - (i) would not have been entered into independently of the other or others; or
 - (ii) if entered into independently of the other or others, would not have taken the same form or been on the same terms.
- (8) In this section references, in relation to the transferred company and an assessment to tax, to an associated company are references to any company (whenever formed) which, at the time of the assessment or at an earlier time after the change in ownership—
- (a) has control of the transferred company;
 - (b) is a company of which the transferred company has control; or
 - (c) is a company under the control of the same person or persons as the transferred company.
- (9) A person assessed and charged to tax under this section shall be assessed and charged in the name of the company by whom the tax to which the assessment relates remains unpaid.
- (10) Any assessment made under this section shall not be out of time if made within three years from the date of the final determination of the liability of the company by whom the tax remains unpaid to corporation tax for the accounting period for which that tax was assessed.]

Textual Amendments

F1 S. 767AA inserted (with effect in accordance with s. 114(2) of the amending Act) by Finance Act 1998 (c. 36), s. 114(1)

Modifications etc. (not altering text)

C2 Ss. 767A-768E: The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), reg. 36 to be construed as one (6.4.2006) with these sections, by virtue of that reg.

767B Change of company ownership: supplementary.

- (1) In relation to corporation tax assessed under section 767A—
- (a) section 86 of the Management Act (interest on overdue tax), in so far as it has effect in relation to accounting periods ending on or before 30th September 1993, and
 - (b) section 87A of that Act (corresponding provision for corporation tax due for accounting periods ending after that date),

Status: Point in time view as at 22/03/2001. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: Income and Corporation Taxes Act 1988, Cross Heading: Change in ownership of company is up to date with all changes known to be in force on or before 11 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

shall have effect as if the references in section 86 to the reckonable date and in section 87A to the date when the tax becomes due and payable were, respectively, references to the date which is the reckonable date in relation to the tax-payer company and the date when the tax became due and payable by the tax-payer company.

- [^{F2}(1A) In relation to corporation tax assessed under section 767AA, section 87A of the Management Act shall have effect as if the references to the date when the tax becomes due and payable were references to the date when the tax became due and payable by the transferred company or the associated company (as the case may be).]
- (2) A payment in pursuance of an assessment under section 767A [^{F3}or 767AA] shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes; but any person making such a payment shall be entitled to recover an amount equal to the payment from the tax-payer company [^{F4}or the transferred company or associated company (as the case may be)].
- (3) In subsection (2) above the reference to a payment in pursuance of an assessment includes a reference to a payment of interest under section 86 or 87A of the Management Act (as they have effect by virtue of subsection (1) above).
- (4) For the purposes of [^{F5}sections 767A, 767AA and 767C], “control”, in relation to a company, shall be construed in accordance with section 416 as modified by subsections (5) and (6) below.
- (5) In subsection (2)(a) for “the greater part of” there shall be substituted “50 per cent. of”.
- (6) For subsection (3) there shall be substituted—
- (”) Where two or more persons together satisfy any of the conditions in subsection (2) above and do so by reason of having acted together to put themselves in a position where they will in fact satisfy the condition in question, each of those persons shall be treated as having control of the company.”
- (7) In section 767A(6) “a major change in the nature or conduct of a trade or business” includes any change mentioned in any of paragraphs (a) to (d) of section 245(4); and also includes a change falling within any of those paragraphs which is achieved gradually as the result of a series of transfers.
- (8) In section 767A(6) “transfer”, in relation to an asset, includes any disposal, letting or hiring of it, and any grant or transfer of any right, interest or licence in or over it, or the giving of any business facilities with respect to it.
- (9) Section 839 shall apply for the purposes of section 767A(7).
- (10) Subsection (9) of section 768 shall apply for the purposes of [^{F6}sections 767A and 767AA] as it applies for the purposes of section 768.

Textual Amendments

- F2** S. 767B(1A) inserted (with effect in accordance with s. 116(6) of the amending Act) by Finance Act 1998 (c. 36), s. 116(1)
- F3** Words in s. 767B(2) inserted (with effect in accordance with s. 116(6) of the amending Act) by Finance Act 1998 (c. 36), s. 116(2)(a)
- F4** Words in s. 767B(2) inserted (with effect in accordance with s. 116(6) of the amending Act) by Finance Act 1998 (c. 36), s. 116(2)(b)

Status: Point in time view as at 22/03/2001. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: *Income and Corporation Taxes Act 1988, Cross Heading: Change in ownership of company is up to date with all changes known to be in force on or before 11 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- F5** Words in s. 767B(4) substituted (with effect in accordance with s. 116(6) of the amending Act) by Finance Act 1998 (c. 36), s. 116(3)
- F6** Words in s. 767B(10) substituted (with effect in accordance with s. 116(6) of the amending Act) by Finance Act 1998 (c. 36), s. 116(4)

Modifications etc. (not altering text)

- C3** Ss. 767A-768E: The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), reg. 36 to be construed as one (6.4.2006) with these sections, by virtue of that reg.

[^{F7}767C Change in company ownership: information.

- (1) This section applies where it appears to the Board that—
 - (a) there has been a change in the ownership of a company (“the subject company”); and
 - (b) in connection with that change a person (“the seller”) may be or become liable to be assessed and charged to corporation tax under section 767A or 767AA.
- (2) The Board may by notice require any person to supply to them—
 - (a) any document in the person’s possession or power which appears to the Board to be relevant for determining any one or more of the matters referred to in subsection (3) below; or
 - (b) any particulars which appear to them to be so relevant.
- (3) Those matters are—
 - (a) whether the seller is or may become liable as mentioned in subsection (1) above and the extent of the liability or potential liability; and
 - (b) whether the subject company or an associated company is or may become liable to be assessed to any tax in respect of which the seller is or could become liable as mentioned in subsection (1) above, and the extent of the liability or potential liability of the subject company or associated company.
- (4) Without prejudice to the following provisions of this section, the references in subsection (2) above to documents and particulars are references to the documents and particulars specified or described in the notice.
- (5) A notice under subsection (2) above must specify the period, which must not be less than 30 days, within which the notice must be complied with.
- (6) Any person to whom any documents are supplied under this section may take copies of them or of any extracts from them.
- (7) A notice under subsection (2) above shall not oblige a person to supply any documents or particulars relating to the conduct of any pending appeal relating to tax.
- (8) In relation to any notice under subsection (2) above—
 - (a) subsection (4) of section 20B of the ^{M1}Taxes Management Act 1970 (rules relating to copies of documents) shall apply as it applies in relation to a notice under section 20(1) of that Act; and
 - (b) subsections (8) to (14) of section 20B of that Act (rules about obtaining documents etc. from professional advisers) shall apply as they apply in relation to a notice under section 20(3) of that Act but as if any reference to an inspector were a reference to the Board;

Status: Point in time view as at 22/03/2001. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: Income and Corporation Taxes Act 1988, Cross Heading: Change in ownership of company is up to date with all changes known to be in force on or before 11 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

and subsection (8C) of section 20 of that Act (exclusion of personal records and journalistic material) shall apply for the purposes of this section as it applies for the purposes of that section.

- (9) In this section references, in relation to the subject company and an assessment to tax, to an associated company are references to any company which, at the time of the assessment or at an earlier time after the change in ownership—
- (a) has control of the subject company;
 - (b) is a company of which the subject company has control; or
 - (c) is a company under the control of the same person or persons as the subject company.
- (10) In this section “document” means anything in which information of any description is recorded.]

Textual Amendments

F7 S. 767C inserted (with effect in accordance with s. 115(3) of the amending Act) by Finance Act 1998 (c. 36), s. 115(1)

Modifications etc. (not altering text)

C4 Ss. 767A-768E: The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), reg. 36 to be construed as one (6.4.2006) with these sections, by virtue of that reg.

Marginal Citations

M1 1970 c. 9.

768 Change in ownership of company: disallowance of trading losses.

^{M2}(1) If—

- (a) within any period of three years there is both a change in the ownership of a company and (either earlier or later in that period, or at the same time) a major change in the nature or conduct of a trade carried on by the company, or
- (b) at any time after the scale of the activities in a trade carried on by a company has become small or negligible, and before any considerable revival of the trade, there is a change in the ownership of the company,

no relief shall be given under section 393 by setting a loss incurred by the company in an accounting period beginning before the change of ownership against any income or other profits of an accounting period ending after the change of ownership.

- (2) In applying this section to the accounting period in which the change of ownership occurs, the part ending with the change of ownership, and the part after, shall be treated as two separate accounting periods, and the profits or losses of the accounting period shall be apportioned to the two parts.
- (3) The apportionment under subsection (2) above shall be on a time basis according to the respective lengths of those parts except that if it appears that that method would work unreasonably or unjustly such other method shall be used as appears just and reasonable.
- (4) In subsection (1) above “major change in the nature or conduct of a trade” includes—

Status: Point in time view as at 22/03/2001. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: *Income and Corporation Taxes Act 1988, Cross Heading: Change in ownership of company is up to date with all changes known to be in force on or before 11 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) a major change in the type of property dealt in, or services or facilities provided, in the trade; or
 - (b) a major change in customers, outlets or markets of the trade;
- and this section applies even if the change is the result of a gradual process which began outside the period of three years mentioned in subsection (1)(a) above.
- (5) In relation to any relief available under section 343 to a successor company, subsection (1) above shall apply as if any loss sustained by a predecessor company had been sustained by a successor company and as if the references to a trade included references to the trade as carried on by a predecessor company.
- (6) Where relief in respect of a company's losses has been restricted under this section then, notwithstanding [^{F8}section 577(3) of the Capital Allowances Act], in applying the provisions of that Act about balancing charges to the company by reference to any event after the change of ownership of the company, any allowance or deduction falling to be made in taxing the company's trade for any chargeable period before the change of ownership shall be disregarded unless the profits or gains of that chargeable period or of any subsequent chargeable period before the change of ownership were sufficient to give effect to the allowance or deduction.
- (7) In applying subsection (6) above it shall be assumed that any profits or gains are applied in giving effect to any such allowance or deduction in preference to being set off against any loss which is not attributable to such an allowance or deduction.
- (8) Where the operation of this section depends on circumstances or events at a time after the change of ownership (but not more than three years after), an assessment to give effect to the provisions of this section shall not be out of time if made within six years from that time, or the latest of those times.
- (9) Any person in whose name any shares, stock or securities of a company are registered shall, if required by notice by an inspector given for the purposes of this section, state whether or not he is the beneficial owner of those shares or securities and, if not the beneficial owner of those shares or securities of any of them, shall furnish the name and address of the person or persons on whose behalf those shares, stock or securities are registered in his name.

Textual Amendments

- F8** Words in s. 768(6) substituted (with effect in accordance with s. 579 of the amending Act) by [Capital Allowances Act 2001 \(c. 2\), Sch. 2 para. 55](#)

Modifications etc. (not altering text)

- C5** Ss. 768, 768D modified (8.6.2005) by [Railways Act 2005 \(c. 14\), s. 60\(2\), Sch. 10 para. 11; S.I. 2005/1444, art. 2\(1\), Sch. 1](#)
- C6** Ss. 767A-768E: [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), **reg. 36** to be construed as one (6.4.2006) with these sections, by virtue of that reg.
- C7** Ss. 768-768E modified (22.7.2008) by [Crossrail Act 2008 \(c. 18\), Sch. 13 para. 30](#)
- C8** See s.245—*calculation etc. of ACT on change of ownership.*

Marginal Citations

- M2** Source—1970 s.483(1)-(7)

Status: Point in time view as at 22/03/2001. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: Income and Corporation Taxes Act 1988, Cross Heading: Change in ownership of company is up to date with all changes known to be in force on or before 11 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

[768A ^{F9}Change in ownership: disallowance of carry back of trading losses.

- (1) In any case where—
 - (a) within any period of three years there is both a change in the ownership of a company and (either earlier or later in that period, or at the same time) a major change in the nature or conduct of a trade carried on by the company, or
 - (b) at any time after the scale of the activities in a trade carried on by a company has become small or negligible, and before any considerable revival of the trade, there is a change in the ownership of the company,no relief shall be given under section 393A(1) by setting a loss incurred by the company in an accounting period ending after the change in ownership against any profits of an accounting period beginning before the change in ownership.
- (2) Subsections (2) to (4), (8) and (9) of section 768 shall apply for the purposes of this section as they apply for the purposes of that section.
- (3) This section applies in relation to changes in ownership occurring on or after 14th June 1991.]

Textual Amendments

F9 S. 768A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)(4)(5), **Sch. 15 para. 20(1)**

Modifications etc. (not altering text)

C9 Ss. 767A-768E: The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), **reg. 36** to be construed as one (6.4.2006) with these sections, by virtue of that reg.

[^{F10}768BChange in ownership of investment company: deductions generally.

- (1) This section applies where there is a change in the ownership of an investment company and—
 - (a) after the change there is a significant increase in the amount of the company’s capital; or
 - (b) within the period of six years beginning three years before the change there is a major change in the nature or conduct of the business carried on by the company; or
 - (c) the change in the ownership occurs at any time after the scale of the activities in the business carried on by the company has become small or negligible and before any considerable revival of the business.
- (2) For the purposes of subsection (1)(a) above, whether there is a significant increase in the amount of a company’s capital after a change in the ownership of the company shall be determined in accordance with the provisions of Part I of Schedule 28A.
- (3) In paragraph (b) of subsection (1) above “major change in the nature or conduct of a business” includes a major change in the nature of the investments held by the company, even if the change is the result of a gradual process which began before the period of six years mentioned in that paragraph.
- (4) For the purposes of this section—

Status: Point in time view as at 22/03/2001. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: *Income and Corporation Taxes Act 1988, Cross Heading: Change in ownership of company is up to date with all changes known to be in force on or before 11 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) the accounting period of the company in which the change in the ownership occurs shall be divided into two parts, the first the part ending with the change, the second the part after;
 - (b) those parts shall be treated as two separate accounting periods; and
 - (c) the amounts in issue for the accounting period being divided shall be apportioned to those parts.
- (5) In Schedule 28A—
- (a) Part II shall have effect for identifying the amounts in issue for the accounting period being divided; and
 - (b) Part III shall have effect for the purpose of apportioning those amounts to the parts of that accounting period.
- (6) Any sums which—
- (a) are disbursed or treated as disbursed as expenses of management in the accounting period being divided, and
 - (b) under Part III of Schedule 28A are apportioned to either part of that period, shall be treated for the purposes of section 75 as disbursed in that part.
- (7) Any charges which under Part III of Schedule 28A are apportioned to either part of the accounting period being divided shall be treated for the purposes of sections 338 and 75 as paid in that part.
- (8) Any allowances which under Part III of Schedule 28A are apportioned to either part of the accounting period being divided shall be treated for the purposes of [^{F11}section 253 of the Capital Allowances Act] and section 75(4) as falling to be made in that part.
- (9) In computing the total profits of the company for an accounting period ending after the change in the ownership, no deduction shall be made under section 75 by reference to—
- (a) sums disbursed or allowances falling to be made for an accounting period beginning before the change; or
 - (b) charges paid in such an accounting period.
- [^{F12}(10) Part IV of Schedule 28A shall have effect for the purpose of restricting, in a case where this section applies, the debits to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) in respect of the company's loan relationships.]
- (12) Subject to the modification in subsection (13) below, subsections (6) to (9) of section 768 shall apply for the purposes of this section as they apply for the purposes of that section.
- (13) The modification is that in subsection (6) of section 768 for the words “relief in respect of a company's losses has been restricted” there shall be substituted “deductions from a company's total profits [^{F13}, or the debits to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 in the case of a company in respect of its loan relationships,] have been restricted.”
- (14) In this section “investment company” has the same meaning as in Part IV.]

Status: Point in time view as at 22/03/2001. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: Income and Corporation Taxes Act 1988, Cross Heading: Change in ownership of company is up to date with all changes known to be in force on or before 11 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Textual Amendments

- F10** Ss. 768B, 768C inserted (with application in accordance with Sch. 26 para. 5 of the amending Act) by Finance Act 1995 (c. 4), Sch. 26 para. 2
- F11** Words in s. 768B(8) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 56
- F12** S. 768B(10) substituted for s. 768B(10)(11) (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), Sch. 14 para. 39(1) (with Sch. 15)
- F13** Words in s. 768B(13) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), Sch. 14 para. 39(2) (with Sch. 15)

[^{F10}768C] Deductions: asset transferred within group.

- (1) This section applies where—
- there is a change in the ownership of an investment company (“the relevant company”);
 - none of paragraphs (a) to (c) of section 768B(1) applies;
 - after the change in the ownership the relevant company acquires an asset from another company in circumstances such that section 171(1) of the 1992 Act applies to the acquisition; and
 - a chargeable gain (“a relevant gain”) accrues to the relevant company on a disposal of the asset within the period of three years beginning with the change in the ownership.
- (2) For the purposes of subsection (1)(d) above an asset acquired by the relevant company as mentioned in subsection (1)(c) above shall be treated as the same as an asset owned at a later time by that company if the value of the second asset is derived in whole or in part from the first asset, and in particular where the second asset is a freehold and the first asset was a leasehold and the lessee has acquired the reversion.
- (3) For the purposes of this section—
- the accounting period of the relevant company in which the change in the ownership occurs shall be divided into two parts, the first the part ending with the change, the second the part after;
 - those parts shall be treated as two separate accounting periods; and
 - the amounts in issue for the accounting period being divided shall be apportioned to those parts.
- (4) In Schedule 28A—
- Part V shall have effect for identifying the amounts in issue for the accounting period being divided; and
 - Part VI shall have effect for the purpose of apportioning those amounts to the parts of that accounting period.
- (5) Subsections (6) to (8) of section 768B shall apply in relation to the relevant company as they apply in relation to the company mentioned in subsection (1) of that section except that any reference in those subsections to Part III of Schedule 28A shall be read as a reference to Part VI of that Schedule.
- (6) Subsections (7) and (9) below apply only where, in accordance with the relevant provisions of the 1992 Act and Part VI of Schedule 28A, an amount is included in

Status: Point in time view as at 22/03/2001. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: Income and Corporation Taxes Act 1988, Cross Heading: Change in ownership of company is up to date with all changes known to be in force on or before 11 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

respect of chargeable gains in the total profits for the accounting period of the relevant company in which the relevant gain accrues.

- (7) In computing the total profits of the relevant company for the accounting period in which the relevant gain accrues, no deduction shall be made under section 75 by reference to—
- (a) sums disbursed or allowances falling to be made for an accounting period of the relevant company beginning before the change in ownership, or
 - (b) charges paid in such an accounting period,
- from an amount of the total profits equal to the amount which represents the relevant gain.
- (8) For the purposes of this section, the amount of the total profits for an accounting period which represents the relevant gain is—
- (a) where the amount of the relevant gain does not exceed the amount which is included in respect of chargeable gains for that period, an amount equal to the amount of the relevant gain;
 - (b) where the amount of the relevant gain exceeds the amount which is included in respect of chargeable gains for that period, the amount so included.
- [^{F14}(9) Part IV of Schedule 28A shall have effect for the purpose of restricting, in a case where this section applies, the debits to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) in respect of the relevant company’s loan relationships.]
- (11) Subsections (8) and (9) of section 768 shall apply for the purposes of this section as they apply for the purposes of that section.
- (12) In this section—
- “the relevant provisions of the 1992 Act” means section 8(1) of and Schedule 7A to that Act; and
- “investment company” has the same meaning as in Part IV.]

Textual Amendments

- F10** Ss. 768B, 768C inserted (with application in accordance with Sch. 26 para. 5 of the amending Act) by Finance Act 1995 (c. 4), Sch. 26 para. 2
- F14** S. 768C(9) substituted for s. 768C(9)(10) (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), Sch. 14 para. 40 (with Sch. 15)

[^{F15}768D] Change in ownership of company carrying on property business.

- (1) This section applies where there is a change in the ownership of a company carrying on a Schedule A business and—
- (a) in the case of an investment company, either—
 - (i) paragraph (a), (b) or (c) of section 768B(1) applies, or
 - (ii) section 768C applies;
 - (b) in the case of a company which is not an investment company, paragraph (a) or (b) of section 768(1) applies.

Status: Point in time view as at 22/03/2001. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: *Income and Corporation Taxes Act 1988, Cross Heading: Change in ownership of company is up to date with all changes known to be in force on or before 11 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) Where this section applies the following provisions have effect to prevent relief being given under section 392A by setting a Schedule A loss incurred by the company before the change of ownership against profits arising after the change.
- (3) The accounting period in which the change of ownership occurs is treated for that purpose as two separate accounting periods, the first ending with the change and the second consisting of the remainder of the period.
- (4) The profits or losses of the period in which the change occurs are apportioned to those two periods—
 - (a) in the case of an investment company—
 - (i) where paragraph (a), (b) or (c) of section 768B(1) applies, in accordance with Parts II and III of Schedule 28A, or
 - (ii) where section 768C applies, in accordance with Parts V and VI of that Schedule, and
 - (b) in the case of a company which is not an investment company, according to the length of the periods,
unless in any case the specified method of apportionment would work unjustly or unreasonably in which case such other method shall be used as appears just and reasonable.
- (5) Relief under section 392A(1) against total profits of the same accounting period is available only in relation to each of those periods considered separately.
- (6) A loss made in any accounting period beginning before the change of ownership may not be set off under section 392A(2) against, or deducted by virtue of section 392A(3) from—
 - (a) in the case of—
 - (i) an investment company where paragraph (a), (b) or (c) of section 768B(1) applies, or
 - (ii) a company which is not an investment company,
profits of an accounting period ending after the change of ownership;
 - (b) in the case of an investment company where section 768C applies, from so much of those profits as represents the relevant gain within the meaning of that section.
- (7) Subsections (8) and (9) of section 768 (time limits for assessment; information powers) apply for the purposes of this section as they apply for the purposes of that section.
- (8) In this section—
 - (a) any reference to a case where paragraph (a) or (b) of section 768(1) applies includes the case where that paragraph would apply if the reference there to a trade carried on by the company were to a Schedule A business carried on by it;
 - (b) “investment company” has the same meaning as in Part IV.
- (9) The provisions of this section apply in relation to an overseas property business as they apply in relation to a Schedule A business.]

Status: Point in time view as at 22/03/2001. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: *Income and Corporation Taxes Act 1988, Cross Heading: Change in ownership of company is up to date with all changes known to be in force on or before 11 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F15 S. 768D inserted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), Sch. 5 para. 31 (with Sch. 5 para. 73)

VALID FROM 24/07/2002

[^{F16}768E Change in ownership of company with unused non-trading loss on intangible fixed assets

- (1) Where there is a change in the ownership of an investment company and either—
 - (a) paragraph (a), (b) or (c) of section 768B(1) applies, or
 - (b) section 768C applies,
 the following provisions have effect to prevent relief being given under paragraph 35 of Schedule 29 to the Finance Act 2002 by setting a non-trading loss on intangible fixed assets incurred by the company before the change of ownership against profits arising after the change.
- (2) The accounting period in which the change of ownership occurs is treated for that purpose as two separate accounting periods, the first ending with the change and the second consisting of the remainder of the period.
- (3) The profits or losses of the period in which the change occurs are apportioned to those two periods—
 - (a) where paragraph (a), (b) or (c) of section 768B(1) applies, in accordance with Parts 2 and 3 of Schedule 28A, or
 - (b) where section 768C applies, in accordance with Parts 5 and 6 of that Schedule,
 unless in any case the specified method of apportionment would work unjustly or unreasonably in which case such other method shall be used as appears just and reasonable.
- (4) Relief under paragraph 35 of Schedule 29 to the Finance Act 2002 against total profits of the same accounting period is available only in relation to each of those periods considered separately.
- (5) A loss made in any accounting period beginning before the change of ownership may not be set off under paragraph 35(3) of Schedule 29 to the Finance Act 2002 against—
 - (a) in a case where paragraph (a), (b) or (c) of section 768B(1) applies, profits of an accounting period ending after the change of ownership;
 - (b) in a case where section 768C applies, so much of those profits as represents the relevant gain within the meaning of that section.
- (6) Subsections (8) and (9) of section 768 (time limits for assessment; information powers) apply for the purposes of this section as they apply for the purposes of that section.
- (7) In this section “investment company” has the same meaning as in Part 4.]

Status: Point in time view as at 22/03/2001. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: Income and Corporation Taxes Act 1988, Cross Heading: Change in ownership of company is up to date with all changes known to be in force on or before 11 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Textual Amendments

F16 S. 768E inserted (24.7.2002) by Finance Act 2002 (c. 23), Sch. 30 para. 4(3)

769 Rules for ascertaining change in ownership of company.

^{M3}(1) For the purposes of [^{F17}sections 767A, [^{F18}767AA, 767C,] 768, 768A, 768B [^{F19}, 768C and 768D]] there is a change in the ownership of a company—

- (a) if a single person acquires more than half the ordinary share capital of the company; or
- (b) if two or more persons each acquire a holding of 5 per cent. or more of the ordinary share capital of the company, and those holdings together amount to more than half the ordinary share capital of the company; or
- (c) if two or more persons each acquire a holding of the ordinary share capital of the company, and the holdings together amount to more than half the ordinary share capital of the company, but disregarding a holding of less than 5 per cent. unless it is an addition to an existing holding and the two holdings together amount to 5 per cent. or more of the ordinary share capital of the company.

(2) In applying subsection (1) above—

- (a) the circumstances at any two points of time with not more than three years between may be compared, and a holder at the later time may be regarded as having acquired whatever he did not hold at the earlier time, irrespective of what he has acquired or disposed of in between;
- (b) to allow for any issue of shares or other reorganisation of capital, the comparison may be made in terms of percentage holdings of the total ordinary share capital at the respective times, so that a person whose percentage holding is greater at the later time may be regarded as having acquired a percentage holding equal to the increase;
- (c) to decide for the purposes of subsection (1)(b) or (c) above if any person has acquired a holding of at least 5 per cent., or a holding which makes at least 5 per cent. when added to an existing holding, acquisitions by, and holdings of, two or more persons who are connected persons within the meaning of section 839 shall be aggregated as if they were acquisitions by, and holdings of, one and the same person;
- (d) any acquisition of shares under the will or on the intestacy of a deceased person [^{F20}, and any gift of shares which] is unsolicited and made without regard to the provisions of [^{F21}sections 767A, [^{F22}767AA,] 768, 768A, 768B [^{F19}, 768C and 768D]], ^{F23} . . . shall be left out of account.

[^{F24}(2A) Where—

- (a) persons, whether company members or not, possess extraordinary rights or powers under the articles of association or under any other document regulating the company, and
- (b) because of that fact ownership of the ordinary share capital may not be an appropriate test of whether there has been a change in the ownership of the company,

then, in considering whether there has been a change in the ownership of the company for the purposes of section 767A [^{F25}, 767AA or 767C], holdings of all kinds of share capital, including preference shares, or of any particular category of share capital, or

Status: Point in time view as at 22/03/2001. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: Income and Corporation Taxes Act 1988, Cross Heading: Change in ownership of company is up to date with all changes known to be in force on or before 11 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

voting power or any other kind of special power may be taken into account instead of ordinary share capital.]

- (3) Where, because persons, whether company members or not, possess extraordinary rights or powers under the articles of association or under any other document regulating the company, ownership of the ordinary share capital may not be an appropriate test of whether there has been a major change in the persons for whose benefit the losses may ultimately enure, then, in considering whether there has been a change in the ownership of the company for the purposes of section 768 [F26, 768A or 768D], holdings of all kinds of share capital, including preference shares, or of any particular category of share capital, or voting power or any other special kind of power, may be taken into account instead of ordinary share capital.

[F27(3A) Subsection (3) above shall apply for the purposes of sections 768B and 768C as if the reference to the benefit of losses were a reference to the benefit of deductions.]

- (4) Where [F28section 768, 768A, 768B [F29, 768C or 768D]] has operated to restrict relief by reference to a change of ownership taking place at any time, no transaction or circumstances before that time shall be taken into account in determining whether there is any subsequent change of ownership.

- (5) A change in the ownership of a company shall be disregarded for the purposes of [F30sections 767A, [F18767AA, 767C,] 768, 768A, 768B [F19, 768C and 768D]] if—

- (a) immediately before the change the company is the 75 per cent. subsidiary of another company, and
- (b) (although there is a change in the direct ownership of the company) that other company continues after the change to own the first-mentioned company as a 75 per cent. subsidiary.

[F31(6) If there is a change in the ownership of a company, including a change occurring by virtue of the application of this subsection but not a change which is to be disregarded under subsection (5) above, then—

- (a) in a case falling within subsection (1)(a) above, the person mentioned in subsection (1)(a) shall be taken for the purposes of this section to acquire at the time of the change any relevant assets owned by the company;
- (b) in a case falling within subsection (1)(b) above but not within subsection (1)(a) above, each of the persons mentioned in subsection (1)(b) shall be taken for the purposes of this section to acquire at the time of the change the appropriate proportion of any relevant assets owned by the company; and
- (c) in any other case, each of the persons mentioned in paragraph (c) of subsection (1) above (other than any whose holding is disregarded under that paragraph) shall be taken for the purposes of this section to acquire at the time of the change the appropriate proportion of any relevant assets owned by the company.

(6A) In subsection (6) above—

“the appropriate proportion”, in relation to one of two or more persons mentioned in subsection (1)(b) or (c) above, means a proportion corresponding to the proportion which the percentage of the ordinary share capital acquired by him bears to the percentage of that capital acquired by all those persons taken together; and

“relevant assets”, in relation to a company, means—

- (a) any ordinary share capital of another company, and

Status: Point in time view as at 22/03/2001. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: Income and Corporation Taxes Act 1988, Cross Heading: Change in ownership of company is up to date with all changes known to be in force on or before 11 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (b) any property or rights which under subsection (3) above may be taken into account instead of ordinary share capital of another company.
- (6B) Notwithstanding that at any time a company (“the subsidiary company”) is a 75 per cent. subsidiary of another company (“the parent company”) it shall not be treated at that time as such a subsidiary for the purposes of this section unless, additionally, at that time—
- (a) the parent company would be beneficially entitled to not less than 75 per cent. of any profits available for distribution to equity holders of the subsidiary company; and
- (b) the parent company would be beneficially entitled to not less than 75 per cent. of any assets of the subsidiary company available for distribution to its equity holders on a winding-up.
- (6C) Schedule 18 shall apply for the purposes of subsection (6B) above as it applies for the purposes of section 413(7).]
- (7) For the purposes of this section—
- (a) references to ownership shall be construed as references to beneficial ownership, and references to acquisition shall be construed accordingly;
- (b) *a company shall be deemed to be a 75 per cent. subsidiary of another company if and so long as not less than three-quarters of its ordinary share capital is owned by that other company, whether directly or through another company or other companies, or partly directly and partly through another company or other companies*^{F32};
- (c) *the amount of ordinary share capital of one company owned by a second company through another company or other companies or partly directly and partly through another company or other companies, shall be determined in accordance with subsections (5) to (10) of section 838; and*
- ^{F33}(d) “shares” includes stock.
- (8) If any acquisition of ordinary share capital or other property or rights taken into account in determining that there has been a change of ownership of a company was made in pursuance of a contract of sale or option or other contract, or the acquisition was made by a person holding such a contract, then the time when the change in the ownership of the company took place shall be determined as if the acquisition had been made when the contract was made with the holder or when the benefit of it was assigned to him so that, in the case of a person exercising an option to purchase shares, he shall be regarded as having purchased the shares when he acquired the option.
- ^{F34}(9) Subsection (8) above shall not apply in relation to section 767A [^{F25}, 767AA or 767C].]

Textual Amendments

- F17** Words in s. 769(1) substituted (with application in accordance with Sch. 26 para. 5 of the amending Act) by Finance Act 1995 (c. 4), Sch. 26 para. 4(2)
- F18** Word in s. 769(1)(5) inserted (with effect in accordance with s. 116(6) of the amending Act) by Finance Act 1998 (c. 36), s. 116(5)(a)
- F19** Words in s. 769(1)(2)(d)(5) substituted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), Sch. 5 para. 32(a) (with Sch. 5 para. 73)
- F20** Words in s. 769(2)(d) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 20 para. 37(a)

Status: Point in time view as at 22/03/2001. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: Income and Corporation Taxes Act 1988, Cross Heading: Change in ownership of company is up to date with all changes known to be in force on or before 11 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- F21** Words in s. 769(2)(d) substituted (with application in accordance with Sch. 26 para. 5 of the amending Act) by Finance Act 1995 (c. 4), **Sch. 26 para. 4(2)**
- F22** Word in s. 769(2)(d) inserted (with effect in accordance with s. 116(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 116(5)(b)**
- F23** Words in s. 769(2)(d) repealed (with effect in accordance with s. 134(2) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 20 para. 37(b), **Sch. 41 Pt. 5(10)**, Note
- F24** S. 769(2A) inserted (with effect in accordance with s. 135(6) of the amending Act) by Finance Act 1994 (c. 9), **s. 135(4)**
- F25** Words in s. 769(2A)(9) inserted (with effect in accordance with s. 116(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 116(5)(c)**
- F26** Words in s. 769(3) substituted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 32(b)** (with Sch. 5 para. 73)
- F27** S. 769(3A) inserted (with application in accordance with Sch. 26 para. 5 of the amending Act) by Finance Act 1995 (c. 4), **Sch. 26 para. 4(3)**
- F28** Words in s. 769(4) substituted (with application in accordance with Sch. 26 para. 5 of the amending Act) by Finance Act 1995 (c. 4), **Sch. 26 para. 4(4)**
- F29** Words in s. 769(4) substituted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 32(c)** (with Sch. 5 para. 73)
- F30** Words in s. 769(5) substituted (with application in accordance with Sch. 26 para. 5 of the amending Act) by Finance Act 1995 (c. 4), **Sch. 26 para. 4(2)**
- F31** S. 769(6)-(6C) substituted (*in relation to change of ownership occurring on or after 14 March 1989*) by Finance Act 1989 (c. 26, SIF 63:1), **s. 100(2)**.
- F32** Repealed by 1989 ss.100(3), 187 and Sch.17 Part IV where the change of ownership of a company would be treated as occurring on or after 14 March 1989.
- F33** Repealed by 1989 ss.100(3), 187 and Sch.17 Part IV where the change of ownership of a company would be treated as occurring on or after 14 March 1989.
- F34** S. 769(9) inserted (with effect in accordance with s. 135(6) of the amending Act) by Finance Act 1994 (c. 9), **s. 135(5)**

Modifications etc. (not altering text)

- C10** See s.245—calculation etc. of ACT on change of ownership.

Marginal Citations

- M3** Source—1970 s.484

Status:

Point in time view as at 22/03/2001. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation:

Income and Corporation Taxes Act 1988, Cross Heading: Change in ownership of company is up to date with all changes known to be in force on or before 11 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.