



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART VIII

TAXATION OF INCOME AND CHARGEABLE GAINS OF COMPANIES

Taxation of income

343 Company reconstructions without a change of ownership.

- (1) ^{M1}Where, on a company (“the predecessor”) ceasing to carry on a trade, another company (“the successor”) begins to carry it on, and—
- (a) on or at any time within two years after that event the trade or an interest amounting to not less than a three-fourths share in it belongs to the same persons as the trade or such an interest belonged to at some time within a year before that event; and
 - (b) the trade is not, within the period taken for the comparison under paragraph (a) above, carried on otherwise than by a company which is within the charge to tax in respect of it;

then the Corporation Tax Acts shall have effect subject to subsections (2) to (6) below.

In paragraphs (a) and (b) above references to the trade shall apply also to any other trade of which the activities comprise the activities of the first mentioned trade.

- (2) [^{F1}In the circumstances mentioned in subsection (1)—]
- (a) there shall be made to or on the successor in accordance with [^{F2}the Capital Allowances Act (including enactments which under this Act are to be treated as contained in that Act)] all such allowances and charges as would, if the predecessor had continued to carry on the trade, have fallen to be made to or on it; and
 - (b) the amount of any such allowance or charge shall be computed as if—
 - (i) the successor had been carrying on the trade since the predecessor began to do so, and

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- (ii) everything done to or by the predecessor had been done to or by the successor (but so that no sale or transfer which on the transfer of the trade is made to the successor by the predecessor of any assets in use for the purpose of the trade shall be treated as giving rise to any such allowance or charge).

The preceding provisions of this subsection shall not apply if the successor is a dual resident investing company (within the meaning of section 404) which begins to carry on the trade after 31st March 1987 ^{F3}; and are subject to section 343A (company reconstructions involving business of leasing plant or machinery)].

- (3) ^{M2F4} . . . Subject to subsection (4) below and to any claim made by the predecessor under section ^{F5}393A(1)]^{F6}(including a case where section 393B applies)], the successor shall be entitled to relief under section 393(1), as for a loss sustained by the successor in carrying on the trade, for any amount for which the predecessor would have been entitled to ^{F7} . . . relief if it had continued to carry on the trade.
- (4) ^{M3}Where the amount of relevant liabilities exceeds the value of relevant assets, the successor shall be entitled to relief by virtue of subsection (3) above only if, and only to the extent that, the amount of that excess is less than the amount mentioned in that subsection.

This subsection does not apply where the predecessor ceased to carry on the trade or part of a trade before 19th March 1986 nor, in a case where subsection (7) below applies, in relation to any earlier event, within the meaning of that subsection, which occurred before that date (but without prejudice to its application in relation to any later event which occurred on or after that date).

^{F8}(4A) Subsection (2A) of section 393A shall not apply to any loss which (but for this subsection) would fall within subsection (2B) of that section by virtue of the predecessor’s ceasing to carry on the trade, and subsection (7) of that section shall not apply for the computation of any such loss.]

- (5) ^{F9}.....
- ^{F10}(6).....
- (7) Where the successor ceases to carry on the trade within the period taken for the comparison under subsection (1)(a) above and on its doing so a third company begins to carry on the trade, ^{F11} . . . , subsections (2) to ^{F12}(5)] above shall apply both in relation to that event (together with the new predecessor and successor) and to the earlier event (together with the original predecessor and successor), but so that—
 - (a) in relation to the earlier event “successor” shall include the successor at either event; and
 - (b) in relation to the later event “predecessor” shall include the predecessor at either event;

and if the conditions of this subsection are thereafter again satisfied, it shall apply again in like manner.

- (8) Where, on a company ceasing to carry on a trade, another company begins to carry on the activities of the trade as part of its trade, then that part of the trade carried on by the successor shall be treated for the purposes of this section as a separate trade, if the effect of so treating it is that subsection (1) or (7) above has effect on that event in relation to that separate trade; and where, on a company ceasing to carry on part of a trade, another company begins to carry on the activities of that part as its trade or

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part of its trade, the predecessor shall for purposes of this section be treated as having carried on that part of its trade as a separate trade if the effect of so treating it is that subsection (1) or (7) above has effect on that event in relation to that separate trade.

- (9) ^{M4}Where under subsection (8) above any activities of a company's trade fall, on the company ceasing or beginning to carry them on, to be treated as a separate trade, such apportionments of receipts, expenses, assets or liabilities shall be made as may be just.
- (10) ^{M5}Where, by virtue of subsection (9) above, any item falls to be apportioned and, at the time of the apportionment, it appears that it is material as respects the liability to tax (for whatever period) of two or more companies, any question which arises as to the manner in which the item is to be apportioned shall be determined, for the purposes of the tax of all those companies [^{F13}in like manner as an appeal, and all those companies shall be entitled to be a party to those proceedings.]
- (a) ^{F14}
 - (b) ^{F14}
 - (c) ^{F14}
- ^{F14}
- (11) Any relief obtainable under this section by way of discharge or repayment of tax shall be given on the making of a claim.
- (12) ^{M6}In the application of this section to any case in relation to which subsection (4) above does not apply—
- (a) subsection (9) above shall have effect with the substitution for the words following “separate trade” of the words “ any necessary apportionment shall be made of receipts or expenses ”; and
 - (b) subsection (10) above shall have effect with the substitution for “item” of “ sum ”.

Textual Amendments

- F1** Words in s. 343(2) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 107(a)** (with Sch. 2 Pts. 1, 2)
- F2** Words in s. 343(2)(a) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 107(b)** (with Sch. 2 Pts. 1, 2)
- F3** Words in s. 343(2) inserted (19.7.2007) by Finance Act 2007 (c. 11), **Sch. 6 para. 1(1)**
- F4** Words in s. 343(3) repealed (in relation to losses incurred in accounting periods ending on or after 1.4.1991) by Finance Act 1991 (c. 31, SIF 63:1), ss. 73(3)-(5), 123, Sch. 15 para. 7(1)(a), **Sch. 19 Pt. V**, Note 4
- F5** Words in s. 343(3) substituted by Finance Act 1991 (c. 31, SIF 63:1), ss. 73(3)-(5), 123, **Sch 15 para. 7(1)(b)**(in relation to losses incurred in accounting periods ending on or after 1.4.1991)
- F6** Words in s. 343(3) inserted (with effect in accordance with s. 111(3) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 35 para. 3**
- F7** Word in s. 343(3) repealed (with effect in relation to accounting periods ending after the day appointed for the purposes of s. 10 of 1988 c. 1) by 1993 c. 34, s. 213, **Sch. 23 Pt.III** and omitted (27.7.1993) by virtue of s. 120, Sch. 14 para. 8(2)
- F8** S. 343(4A) inserted (with application in accordance with s. 39(8)-(12) of the amending Act) by Finance (No. 2) Act 1997 (c. 58) s. 39(7)
- F9** S. 343(5) omitted (with effect in accordance with s. 66(8) of the repealing Act) by virtue of Finance Act 2008 (c. 9), s. 66(4)(a)

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- F10** S. 343(6) repealed (in relation to losses incurred in accounting periods ending on or after 1.4.1991) by Finance Act 1991 (c. 31, SIF 63:1), ss. **73(3)**(-)(5), 123, Sch. 15 para. 7(2), Sch. 19 Pt. V, Note 4
- F11** Words in s. 343(7) repealed (in relation to losses incurred in accounting periods ending on or after 1.4.1991) by Finance Act 1991 (c. 31, SIF 63:1), ss. 73(3)(-)(5), 123, Sch. 15 para. 7(3)(a), **Sch. 19 Pt. V**, Note 4
- F12** Words in s. 343(7) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)(-)(5), **Sch. 15 para. 7(3)(b)**(in relation to losses incurred in accounting periods ending on or after 1.4.1991)
- F13** Words in s. 343(10) inserted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 137(2)**
- F14** S. 343(10)(a)-(c) and words omitted (1.4.2009) by virtue of The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 137(3)**

Modifications etc. (not altering text)

- C1** S. 343 excluded (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(1)(3), **Sch. 24 para. 20(8)**
- C2** S. 343 excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1)(f), **Sch. 7 para 12(2)** (with s. 43(6))
- C3** S. 343 applied (with modifications) (5.10.2004) by Energy Act 2004 (c. 20), s. 198(2), Sch. 9 paras. 16, **17** (with s. 38(2)); S.I. 2004/2575, art. 2(1), **Sch. 1**
- C4** S. 343 applied (with effect in accordance with s. 43(2) of the 2007 amending Act) by Finance Act 1994 (c. 9), s. **227B** (as inserted by Finance Act 2007 (c. 11), s. **43(1)**)
- C5** S. 343(2) excluded (16.7.1992) by Capital Allowances Act 1990 (c. 1), s. **152B(10)(e)** (as inserted (16.7.1992) by Finance Act 1992 (c. 48), s. **67**).
- C6** S. 343(2) excluded (12.1.2000) by Greater London Authority Act 1999 (c. 29), s. 425(2), Sch. 3 paras. 4(8)(a), **5**; S.I. 1999/3434, **art. 2**
- C7** S. 343(2) excluded (with effect in accordance with s. 579 of the excluding Act) by Capital Allowances Act 2001 (c. 2), s. **561(5)** (with Sch. 3)
- C8** S. 343 applied (with modifications) by 1994 (c. 9), s. 227B(2) (as inserted) (with effect in accordance with s. 43(2) of the amending Act) by Finance Act 2007 (c. 11), s. **43(1)**
- C9** S. 343(2) applied (8.9.2008 for specified purposes) by Housing and Regeneration Act 2008 (c. 17), s. 325(1), **Sch. 7 para. 5**; S.I. 2008/2358, **arts. 2(1)**, 3(1)
- C10** S. 343(3)(4A)(7)-(9)(11) applied (5.10.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 9 para. 2(1)(3)** (with s. 38(2)); S.I. 2004/2575, art. 2(1), **Sch. 1**
- C11** S. 343(3) restricted (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(1)(3), **Sch. 24 para. 15(1)(a)(7)**

Marginal Citations

- M1** Source-1970 s.252(1)
- M2** Source-1970 s.252(3)-(7)
- M3** Source-1970 s.252(3A); 1986 s.42(2), (3), Sch.10 1(2)
- M4** Source-1970 s.252(8); 1986 Sch.10 1(3)
- M5** Source-1970 s.252(9), (10)
- M6** Source-1986 s.42(2), (3)

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