



Income and Corporation Taxes Act 1970

1970 CHAPTER 10

PART XIV

MISCELLANEOUS SPECIAL PROVISIONS

CHAPTER I

PATENTS AND KNOW-HOW

Know-how (income tax, corporation tax and capital gains tax)

386 Dealings in know-how

- (1) Subject to subsections (3) and (6) below, where after 19th March 1968 a person—
- (a) acquires know-how for use in a trade carried on by him, or
 - (b) acquires know-how, and thereafter sets up and commences a trade in which it is used,

writing-down allowances in respect of his expenditure on the acquisition, so far as not otherwise deducted for the purposes of corporation tax or income tax, shall be made in taxing the trade during a writing-down period of six years beginning with the chargeable period related to the expenditure ; and if during that period he ceases to carry on the trade, an allowance equal to the amount of that expenditure then unallowed shall be made in taxing the trade for the chargeable period related to the discontinuance.

For the purposes of this subsection, a person incurring expenditure on know-how before the setting up and commencement of the trade in which it is used shall be treated as incurring it on that setting up and commencement.

- (2) Subject to the said subsection (6), where after 19th March 1968 a person disposes of know-how which has been used in a trade carried on by him, and continues to carry on the trade after the disposal, the amount or value of any consideration received by

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him for the disposal shall, so far as it is not chargeable to tax as a revenue or income receipt, be treated for all purposes as a trading receipt.

- (3) Where after the said 19th March a person disposes of a trade or part of a trade and, together therewith, of know-how used therein, any consideration received by him for the know-how shall be dealt with in relation both to him and to the person acquiring the know-how, if that person provided the consideration, and for the purposes of corporation tax, income tax and capital gains tax, as a payment for goodwill:

Provided that this subsection shall not apply—

- (a) to either of the persons concerned if they so elect by notice in writing given jointly to the inspector within two years of the disposal, or
- (b) to the person acquiring the know-how if the trade in question was, before the acquisition, carried on wholly outside the United Kingdom ;

and where know-how is disposed of with a trade or part of a trade, but this subsection is excluded in relation to the person acquiring it, subsection (1) above shall apply as if that person had acquired it for use in a trade previously carried on by him.

- (4) Subject to subsection (6) below, any consideration received by a person for the disposal of know-how shall, if it is neither chargeable to tax under subsection (2) above, or otherwise as a revenue or income receipt, nor dealt with in relation to him as a payment for goodwill as mentioned in subsection (3) above, be treated as a profit or gain chargeable to tax under Case VI of Schedule D:

Provided that, where the person concerned has incurred expenditure wholly and exclusively in the acquisition or disposal of the know-how, the amount which would apart from this proviso be treated as a profit or gain so chargeable shall be reduced by the amount of that expenditure; but a deduction shall not be twice made in respect of the same expenditure, whether under this proviso or otherwise.

- (5) Where subsection (4) above has effect in the case of an individual who devised the know-how in question, whether alone or jointly with any other person, the amount in respect of which he is chargeable to tax by virtue of that subsection shall be treated for all purposes as earned income.
- (6) The preceding provisions of this section, except subsection (3), shall not apply on any sale of know-how where the buyer is a body of persons over whom the seller has control, or the seller is a body of persons over whom the buyer has control, or both the seller and the buyer are bodies of persons and some other person has control over both of them; and the said subsection (3) shall apply on any such sale with the omission of the proviso.

In this subsection, references to a body of persons include references to a partnership.

- (7) In this section " know-how " means any industrial information and techniques likely to assist in the manufacture or processing of goods or materials, or in the working of a mine, oil-well or other source of mineral deposits (including the searching for, discovery, or testing of deposits or the winning of access there(a), or in the carrying out of any agricultural, forestry or fishing operations.
- (8) Where, in connection with any disposal of know-how, a person gives an undertaking (whether absolute or qualified, and whether legally valid or not) the tenor or effect of which is to restrict his or another's activities in any way, any consideration received in respect of the giving of the undertaking or its total or partial fulfilment shall be

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treated for the purposes of this section as consideration received for the disposal of the know-how.

- (9) Subsection (2) of section 75 of the Capital Allowances Act 1968 (effect of providing writing-down allowances during writing-down period of a specified length) shall apply to this section as it applies to the provisions specified in subsection (1) of that section.