



Corporation Tax Act 2009

2009 CHAPTER 4

PART 3

TRADING INCOME

CHAPTER 13

DISPOSAL AND ACQUISITION OF KNOW-HOW

176 Meaning of “know-how” etc

- (1) In this Chapter “know-how” means any industrial information or techniques likely to assist in—
 - (a) manufacturing or processing goods or materials,
 - (b) working a source of mineral deposits (including searching for, discovering or testing mineral deposits or obtaining access to them), or
 - (c) carrying out any agricultural, forestry or fishing operations.
- (2) For this purpose—

“mineral deposits” includes any natural deposits capable of being lifted or extracted from the earth and for this purpose geothermal energy is treated as a natural deposit, and

“source of mineral deposits” includes a mine, an oil well and a source of geothermal energy.
- (3) For the purposes of this Chapter any consideration received for giving, or wholly or partly fulfilling, an undertaking which—
 - (a) is given in connection with a disposal of know-how, and
 - (b) restricts, or is designed to restrict, any person’s activities in any way,is treated as consideration received for the disposal of the know-how.
- (4) It does not matter whether or not the undertaking is legally enforceable.

Status: This is the original version (as it was originally enacted).

- (5) For the purposes of this Chapter references to a sale of know-how include an exchange of know-how and any provision of this Chapter referring to a sale has effect with the necessary modifications.
- (6) Those modifications include, in particular, reading references to the proceeds of sale and to the price as including the consideration for the exchange.

177 Disposal of know-how if trade continues to be carried on

- (1) This section applies if—
 - (a) a company carrying on a trade receives consideration for the disposal of know-how which has been used in the trade,
 - (b) the company continues to carry on the trade after the disposal, and
 - (c) neither section 178 (disposal of know-how as part of disposal of all or part of a trade) nor section 179 (seller controlled by buyer etc) applies.
- (2) The amount or value of the consideration is treated for corporation tax purposes as a trading receipt, except so far as it is brought into account under section 462 of CAA 2001 (disposal values).
- (3) If the know-how is sold together with other property, the net proceeds of the sale of the know-how are treated as being so much of the net proceeds of the sale of all the property as, on a just and reasonable apportionment, is attributable to the know-how.
- (4) For this purpose all property sold as a result of one bargain is treated as sold together even though—
 - (a) separate prices are, or purport to be, agreed for separate items of that property, or
 - (b) there are, or purport to be, separate sales of separate items of that property.
- (5) Any question about the way in which a sum is to be apportioned under this section must be determined in accordance with section 563(2) to (6) of CAA 2001 (procedure for determining certain questions affecting two or more persons) if it materially affects two or more taxpayers.
- (6) For this purpose a question materially affects two or more taxpayers if, at the time when the question falls to be determined, it appears that the determination is material to the liability to tax (for whatever period) of two or more persons.

178 Disposal of know-how as part of disposal of all or part of a trade

- (1) This section applies if —
 - (a) a person carrying on a trade receives consideration for the disposal of know-how which has been used in the trade, and
 - (b) the know-how is disposed of as part of the disposal of all or part of the trade.
- (2) If the person disposing of the know-how is within the charge to corporation tax, the consideration is treated for corporation tax purposes as a capital receipt for goodwill.
- (3) If the person acquiring the know-how—
 - (a) is within the charge to corporation tax, and
 - (b) provided the consideration,

the consideration is treated for corporation tax purposes as a capital payment for goodwill.

- (4) But the consideration is not treated for corporation tax purposes as a capital payment for goodwill if, before the acquisition, the trade was carried on wholly outside the United Kingdom.
- (5) If the person disposing of the know-how is within the charge to corporation tax—
 - (a) that person, and
 - (b) the person acquiring the know-how (whether or not within the charge to corporation tax),may jointly elect for this section not to apply (but see section 179).
- (6) The election must be made within two years of the disposal.
- (7) If—
 - (a) an election is made under section 194 of ITTOIA 2005 (corresponding income tax provision), and
 - (b) the person making the acquisition mentioned in that section is within the charge to corporation tax,

the persons making the election under that section are treated as also making an election under this section (even though the person disposing of the know-how is not within the charge to corporation tax).

179 Seller controlled by buyer etc

- (1) This section applies if a disposal of know-how is by way of sale and—
 - (a) the seller is a body of persons over which the buyer has control,
 - (b) the buyer is a body of persons over which the seller has control, or
 - (c) both the seller and the buyer are bodies of persons and another person has control over both of them.
- (2) In such a case—
 - (a) section 177 does not apply, and
 - (b) no election may be made under section 178.
- (3) For the purposes of this section “body of persons” includes a firm.