



## “Same Trade”?: Impact on Carry- Forward of Trading Losses

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### Introduction

We are now (hopefully!) exiting from our recent recessionary period, and many traders who have valiantly struggled through these tough trading periods are bringing with them a legacy of trading losses forward. Given the new spirit of optimism that is

emerging, these losses forward can now be viewed in a different light and seen as an asset of sorts, available to offset against the trading profits that we hope will now arise going forward. As a consequence, the rules surrounding the availability of trading losses forward will be of renewed importance.

## Relief for Losses Forward

Relief is available for tax purposes for trading losses incurred by a person in certain circumstances. Where the losses are not fully used in the current year (or by carry-back to the corresponding accounting period for companies), any excess loss relief may be carried forward by the same person indefinitely from year to year and claimed by way of set-off against profits of the same trade (i.e. it is ring-fenced).<sup>1</sup> The purpose of this article is to explore the case law and commentary on what is meant by a trade being “the same trade” and when it may be regarded as having changed to such a degree that it is no longer “the same trade”. We will also examine when a trade will be deemed to have been permanently discontinued, as opposed to merely being in “temporary abeyance”.

## Same Trade

Although the trade must be the same trade (i.e. “that trade”) for the purposes of the relief (allowing losses forward to be set off against profits of the same trade), the legislation does not provide any assistance in relation to what may be considered the same trade.

The provision allowing for the losses does not make any reference to a requirement that the trade be operated continuously. However, where there has been a permanent discontinuance of a trade (as opposed to a temporary abeyance<sup>2</sup>) after which the trade is set up again, re-established or carried on in another form, this is regarded as a new trade. The significance of this is that it is not regarded for tax purposes as being the same trade.<sup>3</sup> The effect of a permanent discontinuance is that the trade is not regarded as being the same trade, which results in the disallowance of the losses.<sup>4</sup> Therefore, when considering whether a trade constitutes “the same trade”, it is necessary to look at not only whether the trade is the same on a practical level but also whether there has been a permanent discontinuance of the trade and, in particular, what is meant by a permanent discontinuance.

In the Taxes Consolidation Act 1997 (TCA 1997) there are a number of specific statutory situations that give rise to a permanent discontinuance:

- › Where a person actually ceases to trade, this may (depending on the circumstances) be regarded as a permanent discontinuance of the trade (and certain rules in relation to the basis of taxation on the cessation of trade will apply).<sup>5</sup>

- › In particular, the death of a person is (generally) regarded as a discontinuance of the trade. This is the case even if the trade carries on after the death of the owner<sup>6</sup> and the trade is clearly the same trade with no alterations, albeit with a new owner. However, in this situation the successor to the trade (unless it is the spouse<sup>7</sup>) is treated as setting up a new trade.<sup>8</sup>
- › In addition, where a person is carrying on a trade and that trade becomes carried on by another individual or partnership, it is regarded as having been permanently discontinued.<sup>9</sup> Although it is clear that a change of proprietorship (to another individual or partnership) amounts to a permanent cessation of the trade, there is no specific reference to the trade becoming carried on by a company.

Other than those particular situations, the meaning of discontinuance and/or permanent discontinuance is left open.

From a corporate perspective (although it does not relate directly to the issue considered in this article, i.e. whether a trade is the same trade or in what instances a permanent cessation will be deemed to have occurred), it is worthwhile noting that there is a further rule impacting on the availability of losses for companies. The change in ownership of a company per se does not result in the disallowance of the trading losses arising to that company. However, the losses will be disallowed<sup>10</sup> where:

- › there is a change of ownership of a company and within any three-year period of that change in ownership there is a major change in the nature or conduct of the trade; or
- › 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.

## Same Activities

Where there is no obvious/statutory permanent cessation of a trade, it is necessary to move to more general principles to ascertain whether there has been an alteration to the trade such that the trade is no longer to be regarded as “the same trade”. When trying to determine whether the “same trade” is being carried on, it is necessary to ascertain what exactly is the trade that is actually being carried on. Once this is determined, it is necessary to make the relevant comparison between the two to look for the required degree of sameness. Given the fact that

many traders will have been forced to adapt their trade in order to survive in the recent recessionary times, the question of whether the trade remains the same trade after the necessary changes have been made is obviously very topical.

## Time of Comparison

Logically, the current trade must be compared to the historical trade for this purpose. However, because the nature of a trade may vary or change over time, it is necessary to decide to what element(s) of the historical trade the current trade must be compared. When an old school friend says “My, haven’t you changed!”, it is likely that they are comparing the current, svelte, urbane and successful you to their memory of (perhaps) the slightly less sophisticated you whom they have not seen since the Leaving Cert! In other words, there are two clear points of comparison. However, it is not so clear for tax purposes what historical point in time the current trade is to be compared to. In addition, a trade may have a number of components, and therefore it is also important to determine whether the trade in question comprises a single trade or a number of trades being carried on together.<sup>11</sup>

It has been held that for loss relief purposes the comparison between the current trade and the historical trade must be such that the current trade is compared to the trade carried on at the time that the losses were incurred. Therefore it is not a matter of looking at some generalised essence of the trade over a period of time but, rather, considering the activities of the trade in the years when the losses were incurred and seeing what the main components of the trade were in those years. Likewise, the activities/components of the trade in the current year are ascertained. Provided that the components are the same when compared on a year-against-year basis, the trades should be regarded as being the same.<sup>12</sup> It is necessary therefore to look at the whole of the trade at the time when the losses were incurred and to consider every activity that went into that trade (in that year) and compare this with the activities being carried on in the trade in the subsequent year that has profits against which the losses are to be set.

## Bundle of Activities

The courts view a trade as being a bundle of activities, which activities may change over time. However, for the purposes of working out whether there has been a change, or it is “the same trade”, it is necessary to consider the entire bundle of activities at the time

when the losses were incurred and the bundle of activities at the time when the losses are claimed.<sup>13</sup> The analogy of the “bundle of sticks versus odd sticks” is useful when considering the premise that a trade differs from the individual acts that make it up. If the bundle of activities included different activities at the time when the losses were incurred from those at the time when the losses are claimed, this is likely to be a change, with the effect that the trade would not be the same.<sup>14</sup> Therefore it is necessary to compare like with like and to establish what were all of the activities carried on at the time when the losses were incurred, and then to carry out a direct comparison between the bundle of activities at that time and the bundle of activities now carried on.

## Matter of Degree

If the bundle of activities is not entirely identical, a question arises of whether the trade is “the same trade”. The authorities indicate that this may be a matter of degree. In other words, to the extent that there are differences between the activities of the trade in an earlier year and the current year (at the time when the losses are claimed), whether the trades are the same is going to be a matter of degree. Where there has been a substantial change in the activities of the trade, this could potentially be regarded as giving rise to a discontinuance of one trade and the commencement of a new trade.<sup>15</sup>

It would seem that when comparing the bundle of activities carried on at each stage, a reasonable, objective approach should be taken by considering what the “man in the street” may think and how he might look at the relative scales of the activities carried on.<sup>16</sup>

## Division

Where there is a division of the trade into two parts carried on by different persons, the view is that, despite the fact that they may be largely similar to the trade carried on previously, neither of the trades subsequently carried on would be regarded as “the same trade” as the trade that existed before it was divided.<sup>17</sup>

## Cessation of Activities

Where all of the activities of a trade cease, this may amount to a discontinuance of the trade (depending on the circumstances). However, where only some of the activities of the trade cease, it is less clear whether there has been a cessation of the trade, and it may be that it is a matter of degree whether the trade has

effectively been discontinued.<sup>18</sup> It has been held in an Irish case that where a part of a trade was discontinued and subsequently resumed after a period of nine months, the trade had not been discontinued,<sup>19</sup> even where the resumption was on a lesser scale.

### Indefinite cessation

To be regarded as a permanent discontinuance, it is not necessary for the discontinuance to be “everlasting”. The trade will be regarded as having been permanently discontinued if the trade has been discontinued “indefinitely”. What is meant by indefinitely is also not entirely clear, but it is understood that if the implication of the facts of the case is that a trade is only temporarily in abeyance (for example, to allow repairs of a premises), the trade would not be regarded as permanently discontinued.<sup>20</sup> In other words, if it is possible, from the facts of the case, reasonably to say that the cessation was only of a temporary nature, the trade should not be regarded as permanently ceased, so that when it resumes it should arguably be “the same trade”. This will require clear evidence of an objective nature supporting the intention of the proprietor to resume.<sup>21</sup> The economic downturn and the financial difficulties that ensued for many traders have inevitably had an effect on the trades that they carried on before the downturn. Many traders will have found that their trades became negligible or temporarily ceased for various reasons, ranging from a decimation of their trades due to the downturn, to the fact that they were distracted from the day-to-day running of their trades because they had to focus on dealing with the banks etc. in relation to their financial difficulties. Now that many of those traders have dealt with their financial issues, they will wish to turn their attention back to resurrecting their trading businesses and they will be anxious to preserve their trading losses forward. Whether their trades will be viewed as permanently discontinued or only in temporary abeyance will be very important to them.

### Intention to resume

Even if it can be established that the activities of the trade are the same (i.e. the bundle of activities) at the material times, it is still necessary to examine the length of time between the year in which the losses were incurred and the year in which the losses are claimed, to ascertain whether there have been any significant events in that period. Despite the fact that the trades may, for all intents and purposes, be identical, the losses forward may still be disallowed if the trade had ceased indefinitely or otherwise been permanently discontinued.<sup>22</sup> If a cessation had occurred in the

intervening period, it is critical to establish that there is objective evidence of the intention of the taxpayer merely to keep the trade in temporary abeyance and to resume it at a future time when a favourable opportunity arose. An inability to provide this kind of evidence may result in a conclusion of permanent cessation and disallowance of the losses. The position in relation to a forced temporary abeyance, which was not intentional on the trader’s behalf but an unfortunate consequence of the distraction of financial difficulties, is untested but likely to be of relevance going forward.

The circumstances and the activities carried on and the efforts made to keep the trade going, or to revive the trade, may tend to support a contention that there was an intention to resume the trade. For example, attempts to negotiate with insurance companies and rebuild the premises after a fire may exhibit the intention to rebuild and reopen, thereby showing continuity even though no sales are made.<sup>23</sup> Likewise, where a business has ceased for a period of time to facilitate a move to a new premises, this may tend to illustrate a continuing intention that the closure should be only temporary (again, provided that ultimately the trades are the same on resumption).<sup>24</sup>

It has been held that where there has been a resumption of a trade (assuming that the trades are identical), the critical issue is what the intention of the proprietor was with respect to any intervening period of cessation.<sup>25</sup> The inability or failure to call a witness or to provide other evidence supporting the intention to resume the trade (at some stage) has led to a finding of permanent cessation in circumstances where the trades were for all intents and purposes identical.

### Actual length of hiatus

Once the intention to resume the trade can be established sufficiently clearly and with enough evidence, it would seem that the period of time for which the trade had ceased need not necessarily be short, and in some cases a trade has been held not to have been discontinued where the company had not obtained any business in six years. However, such a case could be regarded as exceptional, and there was clear evidence that, although there was a very considerable period of time between the discontinuance and the company actually obtaining any business/customers, the company carried on performing its internal functions, such as holding meetings, looking for business etc., but was unsuccessful.<sup>26</sup> There is nothing in the legislation to

suggest that you must trade profitably or successfully; and it must be assumed that as long as the “profit motive” required under the badges of trade exists, an argument can be made that the trade continues. There is, therefore, authority to suggest that it is possible to have a lengthy break before having new business without giving rise to a permanent cessation – provided that the intention to continue can be demonstrated. It can logically be argued that until the trader formally makes the decision to close its doors, the trade continues.

## Summary

It would appear that the assertion that every cloud has a silver lining may hold true for those traders who have incurred trading losses during the recession. Although the accumulation of the trading losses was undoubtedly difficult to endure, the fact that these losses should now be available to shelter future trading profits of the same trade should bring some relief. The crucial matter for those traders will be to ensure that the losses are indeed available to carry forward against the same trade and are not unintentionally, or unfairly, lost to them. There are a number of key elements involved in determining whether a trade is the same or not:

- Where there has been an organic growth in the trade over a long period of time, the trade may be regarded as being the same at all times.

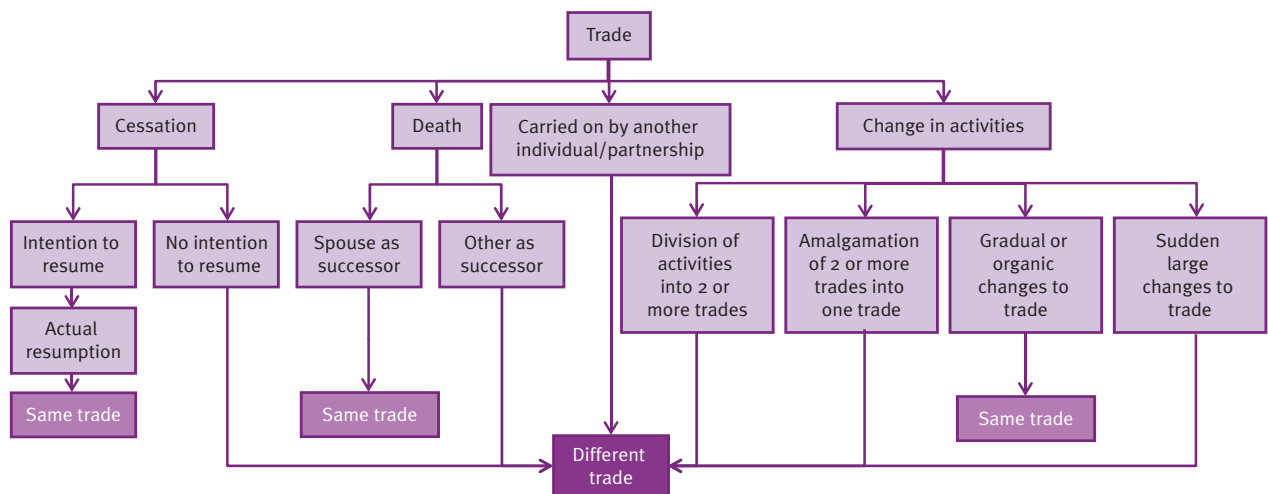
- A sudden change in the nature or scale of the trade could result in a finding that the trade has altered. This is especially the case where there has been a division of the trade into two or more separate trades.
- The death of the proprietor, or a change in ownership, is regarded as the cessation of the trade and therefore leads to a loss of the loss relief because the trade (even though it may have continued uninhibited by the death of the owner) is regarded as being a new trade thereafter.
- A permanent cessation for any other reason will also have the result that the trade (albeit that it may be identical) is no longer the same when it resumes.
- The length of the period of cessation is not necessarily determinative. The crucial component is more likely to be the intention of the trader at the time of the cessation and the availability of objective evidence to support that intention.

The main principles to be applied may be summarised in the following flow chart.

## Conclusion

Obviously, every trader will have his or her own unique set of facts when considering the availability of trading losses forward, and whether the same trade is deemed to exist or the trade is

**Figure 1: How to determine whether a trade is “the same trade”**





considered to have permanently discontinued. The principles outlined above should provide a roadmap to assist in determining whether value can now be derived from historical trading losses in what, one would hope, should now be more profitable times.

## Endnotes

- 1 See s382(1) TCA 1997:  
*"Where, in any trade or profession carried on by a person, either solely or in partnership, such person has sustained a loss (to be computed in the like manner as profits or gains under the provisions of the Income Tax Acts applicable to Cases I and II of Schedule D) in respect of which relief has not been wholly given under section 381 or under any other provision of the Income Tax Acts, such person may claim that any portion of the loss for which relief has not been so given shall be carried forward and, in so far as may be, deducted from or set off against the amount of profits or gains on which such person is assessed under Schedule D in respect of that trade or profession for any subsequent year of assessment, except that, if and in so far as relief in respect of any loss has been given to any person under this section, that person shall not be entitled to claim relief in respect of that loss under any other provision of the Income Tax Acts."*
- 2 See *Income Tax 2010*, Irish Tax Institute, 23rd Ed, G. Reddin, G. Deegan, A. Bolster para. 11.3, "Carry-Forward of Losses under Section 382 TCA 1997":  
*"Whether a trade currently being carried on is the same trade as that in which the losses were incurred is a question of fact, as indeed is the question of whether or not a trade has permanently ceased and recommenced or has merely been suspended. When a trade has merely been suspended, losses can be carried forward and relieved under s382."*
- 3 See *Income Tax 2010*, para. 11.3, "Carry-Forward of Losses under Section 382 TCA 1997":  
*"In order to ensure that losses can be carried forward under s382, the same trade has to be continued without interruption. Losses forward cannot be set against the profits of a new trade and, if trading has permanently ceased, then pre-cessation losses cannot be carried over to a later year when the trade is reactivated."*
- 4 See *J G Ingram & Son Ltd v Callaghan (Inspector of Taxes)* [1969] 1 All ER 433, Harman LJ:  
*"I am unable to take this view of the facts. I cannot see any evidence that when the company's factory was closed and its machinery disposed of and its staff dismissed in 1961 there was any intention of merely keeping it in abeyance to resume at a favourable opportunity. I think that at that time anyone would have said that the business was at an end. If the receipt by the company from Martindill Ltd, during the next year of some part of the proceeds of Martindill's Ltd's activities is to be regarded as a trading activity, I think it was a different and new trade and the manufacturing business started up in the Portslade factory in 1962 seems to me to have been a fresh venture."*
- 5 See s67 TCA 1997, "Special Basis on Discontinuance of Trade or Profession".
- 6 See s67 TCA 1997, "Special Basis on Discontinuance of Trade or Profession":  
*"(2) The reference in subsection (1) to the discontinuance of a trade or profession shall be construed as referring to a discontinuance occurring by reason of the death while carrying on such trade or profession of the person carrying on the same, as well as to a discontinuance during the lifetime of such person, and for the purposes of subsection (1) such death shall be deemed to cause a discontinuance and such discontinuance shall be deemed to take place on the day of such death."*
- 7 See *Income Tax 2010*, para. 11.3, "Carry-Forward of Losses under Section 382 TCA 1997":  
*"By concession, the provisions of s69 do not apply where a person dies and the trade or profession is carried on by the surviving spouse."*
- 8 See s69(2) TCA 1997, "Changes of Proprietorship":  
*"Where at any time an individual (in this subsection referred to as 'the successor') succeeds to a trade or profession which immediately before that time was carried on by another individual or by a partnership of persons (including a partnership in which the successor was a partner), the income tax payable for all years of assessment by the successor shall be computed as if the successor had set up or commenced the trade or profession at that time."*
- 9 See s69(1) TCA 1997, "Changes of Proprietorship":  
*"Where at any time a trade or profession which immediately before that time was carried on by an individual (in this subsection referred to as the 'the predecessor') becomes carried on by another individual or by a partnership of persons (including a partnership in which the predecessor as a partner), the income tax payable for all years of assessment by the predecessor shall be computed as if the trade or profession had been permanently discontinued at that time."*
- 10 See s401 TCA 1997.
- 11 See *Rolls-Royce Motors Ltd v Bamford (Inspector of Taxes)* [1976] STC 162, Walton J:  
*"It will be seen at once from the statutory provisions that the crucial questions here in issue are: what was the 'the trade' the company was carrying on at the relevant time? And, having answered that preliminary question: is the taxpayer company carrying on that trade? In limine comes the further question: was the company carrying on just one trade, or was it carrying on at least six different trades, one for each division?"*
- 12 See *Rolls-Royce Motors Ltd v Bamford (Inspector of Taxes)* [1976] STC 162, Walton J:  
*"I think there is considerable force in that submission and I therefore conclude that the comparison which has to be made is between the trade actually carried on by the company in the accounting periods in which it was making the losses in question (1969, 1970 and a period from 1 January 1971 on) and the trade carried on by the taxpayer company, and not between the 'historic trade' of the company and that of the taxpayer company."*
- 13 See *Rolls-Royce Motors Ltd v Bamford (Inspector of Taxes)* [1976] STC 162, Walton J:  
*"I think it follows from this that 'the essence of the trade', to use the Lord President's phrase, comprises every activity which goes to constitute that trade. Or, put it another way, however the trade of Rolls Royce Ltd 1971 is to be defined, it includes the activities, they were, all ultimately directed towards making profit, whatever their actual results, in all its six divisions. Doubtless the trade of the company would remain the same trade even though, as a result of organic growth in response to every fact which might influence it, the company adopted new compatible operations and discarded portions of its old."*
- 14 See *J G Ingram & Son Ltd v Callaghan (Inspector of Taxes)* [1969] 1 All ER 433, Lord Donovan:  
*"I doubt if one can, as a rule, segregate the various activities involved in carrying on a trade, select one of them as being the essence, and then designate the one selected as being the real trade. There is, I think, an organic unity about a trade which invalidates this sort of dissection; and I think that Rowlatt J., was saying much the same thing, though more incisively when he remarked in *Graham v Green* (Inspector of Taxes) that a trade differs from the individual acts which go to make it up, just as a bundle differs from odd sticks. If the taxpayer company had been asked in period number one what its trade was, it would have replied; 'Making and selling surgical products' – not merely 'Selling certain products'. And in period number two, if asked the same question, I think the company would have replied, and properly replied, 'We have changed over now simply to selling'."*
- 15 See *Gordon and Blair Ltd v Inland Revenue Comrs* 1962 SC 267, 40 Tax Cas 358, 41 ATC 111 [1962] TR 161, 28(i) Digest (Reissue) 177, \*571, in which the Lord President (Clyde) cites with approval an earlier decision of Sir Raymond Evershed MR, *In the matter of Frederick Smith Ltd v CIR* [1950] 29 TC 419:  
*"Sir Raymond Evershed MR, in affirming this conclusion said at page 460: 'I am persuaded by Mr Tucker's argument that there is a real and substantial difference between the two classes of business, that*

conducted by Milward in regard to these houses and that conducted by Smiths, a difference substantial enough to support a finding of the Special Commissioners. This appears to support the conclusion to which I have come in the present case.' Lord Carmont in the same case agrees stating that; 'They treated the matter necessarily as a question of degree, and they decided that the company's former trade ceased in October 1953, and that a new trade was thereafter carried on by it.'

Lord Guthrie in the same case also agrees and states that:

"As the Special Commissioners say, it is a question of degree whether a change in the activities of a company amounts to be discontinuance of a trade and the commencement of a new one."

- 16 See *Rolls-Royce Motors Ltd v Bamford (Inspector of Taxes)* [1976] STC 162, where Walton J approved of the approach of the Special Commissioners:

"We think that we must view the matter as it might be expected to be viewed by the 'man in the street'—assuming that he knew the facts as they have been presented to us. We think that he would make a comparison of the trade of [Rolls-Royce] as it was in the years immediately before the appointment of the Receiver and the trade as carried on by [the taxpayer company] after 19 June 1971. We take the view that he would regard the relative scales of the activities carried on by [Rolls-Royce] and by [the taxpayer company] as a decisive factor and therefore say that the trade carried on by [the taxpayer company] was a different trade from that carried on by [Rolls-Royce]. We are of the same view ourselves and we do not think that it is necessary for the purposes of this appeal to find a point of time at which the change took place.' Now this is, of course, a pure question of fact, and is therefore a matter on which I could not upset the decision of the commissioners even if I should myself have come to a different conclusion..."

- 17 See *Rolls-Royce Motors Ltd v Bamford (Inspector of Taxes)* [1976] STC 162, Walton J:

"However, if there is in substance a complete division of the trade of the company into two separate parts, notwithstanding that trade of the same general nature is carried on thereafter by each of the two now separate entities, it appears to me that neither of them is carrying on the same trade as the composite whole formerly carried on."

- 18 See Purcell McQuillan, *Irish Income Tax 2015* (Dublin: Bloomsbury Professional, 2015), para. 4-206, "Discontinuance of Trade":

"Where all the activities of a trade cease, then clearly there is a discontinuance of a trade. Where only a part of those activities cease, it is a question of fact as to whether what remains can be said to be the same (although diminished) trade or whether it is a new trade. In *Rolls Royce Ltd v Bamford* [1976] STC 162, approximately 20% of the activities of a trade (in terms of sales and labour costs) were transferred to a new company. The court upheld the Appeal Commissioners finding of fact that the transferred activities carried on by the new company represented a new trade and not a continuation of the old trade."

- 19 *Boland's Ltd v Davis* [1925] 1 ITR 86:

"We are of opinion that the questions whether this company, in the circumstances stated, carried on one trade or two distinct trades and whether the trade was discontinued or not are questions of fact and that the sole jurisdiction of this court is to ascertain if there was sufficient evidence to support the conclusions at which the commissioners arrived. We are all of opinion that there was ample evidence to justify their finding; and we must answer the questions put to us in the affirmative."

- 20 See *J G Ingram & Son Ltd v Callaghan (Inspector of Taxes)* [1969] 1 All ER 433, Lord Donovan:

"There is no dispute between the parties that the expression 'permanently discontinued' in relation to a trade, where it appears in s 130 of the Income Tax Act 1952, does not connote a discontinuance which is everlasting. Income tax being a yearly tax, the question has to be answered in relation to the year of assessment in which it arises, and must obviously be answered in the light of the facts which are known at the time when the assessment for that year comes to be made. If, in the light of those facts, the true conclusion is that the trade has been discontinued indefinitely, the Crown, and the taxpayer, would be entitled, I think, to say that it has been discontinued permanently within the meaning of the section. If, on the other hand, the true conclusion from the facts is that the trade is only temporarily in abeyance (eg to allow of extensive reconstruction

or repair of the company's trading premises), then clearly it would be wrong to assert that the trade had been permanently discontinued."

- 21 See *J G Ingram & Son Ltd v Callaghan (Inspector of Taxes)* [1969] 1 All ER 433, Lord Donovan:

"A witness who was a director of the company up to the end of period no 2 in fact gave evidence; and if the taxpayer company's manufacturing business had simply been in abeyance pending a successful outcome of experiments with plastic substituted for rubber, one would have expected him to say so. There is no trace of any such evidence in the Case, and indeed no suggestion that any such evidence was given."

- 22 See *J G Ingram & Son Ltd v Callaghan (Inspector of Taxes)* [1969] 1 All ER 433, Lord Donovan:

"Now the those circumstances I think it is impossible to treat as legally impossible the Special Commissioners' conclusion that the taxpayer company's trade was permanently discontinued (in the sense of ceasing indefinitely) at the end of period no 1 and that a new trade was set up and commenced in period no 3."

- 23 See *Marriott v Lane (Inspector of Taxes)* [1996] STC 704. In this case, which reviewed the case law concerning permanent discontinuance, Sir Richard Scott VC stated:

"The Madame Tussaud's case was a case in which the business conducted by the old company had been interrupted by the accident of the fire. If the old company had rebuilt the exhibition hall and then reopened it would have been very difficult to argue that on the reopening a new business had been commenced. The continuing intention to rebuild and then to reopen would have sufficed. The new company acquired the goodwill of the business and had the intention of reopening the same business as had previously been carried on. The continuing intention first of the directors of the old company and then of the directors of the new company made possible the conclusion that, notwithstanding the delay, there had been no cessation of the business."

- 24 See *Marriott v Lane (Inspector of Taxes)* [1996] STC 704, where Sir Richard Scott VC referred to the case of *Robroyston Brickworks Ltd v IRC* [1976] STC 329:

"In this case, the continuing intention that the discontinuance of the company's business should be only temporary provided the connecting link between the old business and the new business and rebutted the inference that the business had been discontinued."

- 25 See *Marriott v Lane (Inspector of Taxes)* [1996] STC 704, Sir Richard Scott VC:

"It was a common feature of all the cases to which I have been referred that the original business had been followed, in a temporal sense, by a new business. The question in each case was whether, for income tax purposes, the new business could be treated as a continuation of the original business. In deciding that question the intention, or the lack of intention, on the part of the parties was of crucial importance."

- 26 See *Kirk and Randall Ltd v Dunn (Inspector of Taxes)* [1924] 8 TC 663:

"but during those years, to use the language of the Case, it persisted in seeking for business - business which, if they got, they would have had to finance somehow and to carry out which they would have had to acquire plant and workmen whether the business was in this country or elsewhere. But they did not get business. They had their directors all the time, and the directors drew their fees, and their secretary drew his fees; and they also had bills for typing and so on, and bills for legal services; and I see they had workmen's compensation to pay. Now the legal expenses and the stationery charges, and the directors' travelling expenses, which are a large sum, are connected with their efforts to get business, but they did not get any. That went on till 1920, and then they did get something. For the moment I say no more than that they did get something in 1920. In those circumstances the contention must be quite unarguable that on that statement only they began their business in 1920 merely because for the first time somebody yielded to their solicitations for a contract. I do not think that could be said for a moment. Because in the middle of a great career a company, or still more an individual professional man, might have a year when he was holding himself out for business, or the company was holding itself out for business, but nothing came, yet that would not effect a break in the life of the company for Income Tax purposes."