

Tax treatment of directors of companies and employees granted rights to acquire shares or other assets. FA86 s9(1)(a) and (b)(i) and (iii), and (2) to (11)(a) 128.—(1) (a) In this section, except where the context otherwise requires—

“company” has the same meaning as in section 4;

“director” and “employee” have the meanings respectively assigned to them by section 770 (1);

“right” means a right to acquire any asset or assets including shares in any company;

“market value” shall be construed in accordance with section 548;

“shares” includes securities within the meaning of section 135 and stock.

(b) In this section—

(i) references to the release of a right include references to agreeing to the restriction of the exercise of the right;

(ii) a person shall be regarded as acquiring a right as a director of a company or as an employee—

(I) if by reason of the person's office or employment it is granted to the person, or to another person who assigns the right to the person, and

(II) if section 71 (3) does not apply in charging to tax the profits or gains of that office or employment,

and clauses (I) and (II) shall apply to a right granted by reason of a person's office or employment before the person has commenced to hold it or after the person has ceased to hold it as they would apply if the person had commenced to hold the office or employment or had not ceased to hold the office or employment, as the case may be.

(2) Where a person realises a gain by the exercise of, or by the assignment or release of, a right obtained by the person on or after the 6th day of April, 1986, as a director of a company or employee, the person shall be chargeable to tax under Schedule E for the year of assessment in which the gain is so realised on an amount equal to the amount of his or her gain as computed in accordance with this section.

(3) Subject to subsection (5), where tax may by virtue of this section become chargeable in respect of any gain which may be realised by the exercise of a right, tax shall not be chargeable under any other provision of the Tax Acts in respect of the receipt of the right.

(4) The gain realised by—

(a) the exercise of any right at any time shall be taken to be the difference between the market value of the asset or assets, as the case may be, at the time of acquisition and the aggregate amount or value of the consideration, if any, given for the asset or assets and for the grant of the right, and

(b) the assignment or release of any right shall be taken to be the difference between the amount or value of the consideration for the assignment or release and the amount or value of the consideration, if any, given for the grant of the right,

and for this purpose the inspector may make a just apportionment of any entire consideration given for the grant of the right or for the grant of the right and for something besides; but neither the consideration given for the grant of the right nor any such entire consideration shall be taken to include the performance of any duties in or in connection with an office or employment, and no part of the amount or value of the consideration given for the grant shall be deducted more than once under this subsection.

(5) (a) Where a right mentioned in subsection (2) is obtained as mentioned in that subsection and the right is capable of being exercised later than 7 years after it is obtained, subsection (3) shall not prevent the charging of tax under any other provision of the Tax Acts in respect of the receipt of the right; but where tax is charged under such provision it shall be deducted from any tax which under subsection (2) is chargeable by reference to the gain realised by the exercise, assignment or release of the right.

(b) For the purpose of any charge to tax enabled to be made by this subsection, the value of a right shall be taken to be not less than the market value at the time the right is obtained of the asset or assets which may be acquired by the exercise of the right or of any asset or assets for which the asset or assets so acquired may be exchanged, reduced by the amount or value (or, if variable, the least amount or value) of the consideration for which the asset or assets may be so acquired.

(6) Subject to subsection (7), a person shall, in the case of a right granted by reason of the person's office or employment, be chargeable to tax under this section in respect of a gain realised by another person—

(a) if the right was granted to that other person, or

(b) if the other person acquired the right otherwise than by or under an assignment made by means of a bargain at arm's length, or if the 2 persons are connected persons at the time when the gain is realised;

but in a case within paragraph (b) the gain realised shall be treated as reduced by the amount of any gain realised by a previous holder on an assignment of the right.

(7) A person shall not be chargeable to tax by virtue of subsection (6)(b) in respect of any gain realised by another person if the first-mentioned person was divested of the right by operation of law on the first-mentioned person's bankruptcy or otherwise, but the other person shall be chargeable to tax in respect of the gain under Case IV of Schedule D.

(8) Where a right is assigned or released in whole or in part for a consideration which consists of or comprises another right, that other right shall not be treated as consideration for the assignment or

release; but this section shall apply in relation to that other right as it applies in relation to the right assigned or released and as if the consideration for its acquisition did not include the value of the consideration given for the grant of the right assigned or released in so far as that has not been offset by any valuable consideration for the assignment or release other than the consideration consisting of the other right.

(9) (a) Where as a result of 2 or more transactions a person ceases to hold a right and the person or a connected person comes to hold another right (whether or not acquired from the person to whom the other right was assigned) and any of those transactions was effected under arrangements to which 2 or more persons holding rights in respect of which tax may be chargeable under this section were parties, those transactions shall be treated for the purposes of subsection (8) as a single transaction whereby the one right is assigned for a consideration which consists of or comprises the other right.

(b) This subsection shall apply in relation to 2 or more transactions, whether they involve an assignment preceding, coinciding with, or subsequent to, an acquisition.

(10) Where a gain chargeable to tax under subsection (2) or (6) is realised by the exercise of a right, section 552 shall apply as if a sum equal to the amount of the gain so chargeable to tax formed part of the consideration given by the person acquiring the shares for their acquisition by that person.

(11) Where in any year of assessment a person grants a right in respect of which tax may be chargeable under this section, or allots any shares or transfers any asset in pursuance of such a right, or gives any consideration for the assignment or release in whole or in part of such a right, or receives written notice of the assignment of such a right, the person shall deliver particulars thereof in writing to the inspector not later than 30 days after the end of that year.