Chapter 1 Instruments which must be presented to the Commissioners for adjudication in order to obtain exemption or relief

Conveyances and transfers of property between certain bodies corporate. FA1952 s19 79.—(1) Stamp duty shall not be chargeable under or by reference to the following headings in Schedule 1—

(a) “CONVEYANCE or TRANSFER on sale of any stocks or marketable securities”,

(b) “CONVEYANCE or TRANSFER on sale of a policy of insurance or a policy of life insurance where the risk to which the policy relates is located in the State”, or

(c) “CONVEYANCE or TRANSFER on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance”,

on any instrument to which this section applies.

(2) Subsection (1) shall not apply to an instrument unless it has, in accordance with section 20, been stamped with a particular stamp denoting that it is not chargeable with any duty or that it is duly stamped.

(3) This section applies to any instrument as respects which it is shown to the satisfaction of the Commissioners that the effect of the instrument was to convey or transfer a beneficial interest in property from one body corporate to another, and that at the time of the execution of the instrument the bodies in question were associated, that is, one was the beneficial owner of not less than 90 per cent of the issued share capital of the other, or a third such body was the beneficial owner of not less than 90 per cent of the issued share capital of each and that this ownership was ownership either directly or through another body corporate or other bodies corporate, or partly directly and partly through another body corporate or other bodies corporate, and subsections (5) to (10) of section 9 of the Taxes Consolidation Act, 1997 , shall apply for the purposes of this section as if—

(a) references to body corporate were references to company,

(b) references to bodies corporate were references to companies, and

(c) references to issued share capital were references to ordinary share capital.

(4) Notwithstanding that at the time of execution of any instrument the bodies corporate between which the beneficial interest in the property was conveyed or transferred were associated within the meaning of subsection (3), they shall not be treated as having been so associated unless, additionally, at that time—

(a) one such body was beneficially entitled to not less than 90 per cent of any profits available for distribution to the shareholders of the other such body or a third such body was beneficially entitled to not less than 90 per cent of any profits available for distribution to the shareholders of each, and

(b) one such body would be beneficially entitled to not less than 90 per cent of any assets of the other such body available for distribution to its shareholders on a winding-up or a third such body would be beneficially entitled to not less than 90 per cent of any assets available for distribution to the shareholders of each on a winding-up,

and, for the purposes of this section—

(i) the percentage to which one body corporate is beneficially entitled of any profits available for distribution to the shareholders of another body corporate, and

(ii) the percentage to which one body corporate would be beneficially entitled of any assets of another body corporate on a winding-up,

means the percentage to which the first body corporate is, or would be, so entitled either directly or through another body corporate or other bodies corporate or partly directly and partly through another body corporate or other bodies corporate.

(5) This section shall not apply to an instrument unless it is also shown to the satisfaction of the Commissioners that the instrument was not executed in pursuance of or in connection with an arrangement under which—

(a) the consideration, or any part of the consideration, for the conveyance or transfer was to be provided or received, directly or indirectly by a person, other than a body corporate which at the time of the execution of the instrument was associated within the meaning of subsection (3) with either the transferor or the transferee (being, respectively, the body from whom and the body to whom the beneficial interest was conveyed or transferred),

(b) that interest was previously conveyed or transferred, directly or indirectly, by such a person, or

(c) the transferor and the transferee were to cease to be associated within the meaning of subsections (3) and (4),

and, without prejudice to the generality of paragraph (a), an arrangement shall be treated as within that paragraph if it is one under which the transferor or the transferee, or a body corporate associated with either as there mentioned, was to be enabled to provide any of the consideration, or was to part with any of it, by or in consequence of the carrying out of a transaction or transactions involving, or any of them involving, a payment or other disposition by a person other than a body corporate so associated.

(6) (a) The Commissioners may, for the purposes of this section, require the delivery to them of a statutory declaration in such form as they may direct made, as they may direct, by a responsible officer of a body corporate or by a solicitor of the Courts of Justice or by both and of such further evidence (if any) as they may require.

(b) The powers conferred on the Commissioners by paragraph (a) shall be in addition to and not in substitution for the powers conferred on them by section 20.

(7) If—

(a) where any claim for exemption from duty under this section has been allowed, it is subsequently found that any declaration or other evidence furnished in support of the claim was untrue in any material particular, or

(b) the transferor and transferee cease to be associated within the meaning of subsection (3) within a period of 2 years from the date of the conveyance or transfer,

then the exemption shall cease to be applicable and stamp duty shall be chargeable in respect of the conveyance or transfer as if subsection (1) had not been enacted together with interest on the duty, by means of penalty, at the rate of 1 per cent per month or part of a month to the day on which the duty is paid, in a case to which paragraph (a) applies, from the date of the conveyance or transfer or, in a case to which paragraph (b) applies, from the date the transferor and transferee ceased to be so associated.

(8) For the purposes of subsection (4)—

(a) the percentage to which one body is beneficially entitled of any profits available for distribution to shareholders of another company has, subject to any necessary modifications, the meaning assigned to it by section 414 of the Taxes Consolidation Act, 1997 , and

(b) the percentage to which one body is beneficially entitled of any assets of another body available for distribution on a winding-up has, subject to any necessary modifications, the meaning assigned to it by section 415 of the Taxes Consolidation Act, 1997 .