

Special provisions as to certain sales. ITA67 s299 other than subsection (4)(b)(iii); CTA76 s21(1) Sch1 par46; FA96 s132(1) and Sch5 Ptl par1(15) 312.—(1) In this section, “control”, in relation to a body corporate, means the power of a person to secure—

(a) by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate, or

(b) by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate,

that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person and, in relation to a partnership, means the right to a share of more than 50 per cent of the assets, or of more than 50 per cent of the income, of the partnership.

(2) (a) This section shall apply in relation to sales of any property where either—

(i) 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, or

(ii) it appears with respect to the sale, or with respect to transactions of which the sale is one, that the sole or main benefit which apart from this section might have been expected to accrue to the parties or any of them was the obtaining of an allowance under this Part or under Chapter 1 of Part 24 or section 764 or 765.

(b) References in this subsection to a body of persons include references to a partnership.

(3) Where the property is sold at a price other than the price it would have fetched if sold in the open market, then, subject to subsections (4) and (5), the like consequences shall ensue for the purposes of the enactments mentioned in subsection (2), in their application to the tax of all persons concerned, as would have ensued if the property had been sold for the price it would have fetched if sold in the open market.

(4) (a) Subject to paragraph (b), where the sale is a sale of machinery or plant—

(i) no initial allowance shall be made to the buyer, and

(ii) subject to subsection (5), if the price which the property would have fetched if sold in the open market is greater than the amount which, for the purpose of determining whether any, and if so, what, balancing charge should be made on the seller in respect of the property under Chapter 2 of this Part, would be taken to be the amount of the capital expenditure incurred by the seller on the provision of the property, subsection (3) shall apply as if for each of the references to the price which the property would have fetched if sold in the open market there were substituted a reference to that amount.

(b) This subsection shall not apply in relation to a sale of machinery or plant which was never used if the business or part of the business of the seller was the manufacture or supply of machinery or plant of that class and the sale was effected in the ordinary course of the seller's business.

(5) (a) Subject to subsection (6), where the sale is one to which subsection (2)(a)(i) applies and subsection (2)(a)(ii) does not apply, and the parties to the sale by notice in writing to the inspector so elect, the following provisions shall apply:

(i) subsection (3) shall apply as if for each of the references to the price which the property would have fetched if sold in the open market there were substituted a reference to that price or to the sum mentioned in paragraph (b), whichever is the lower;

(ii) subsection (4)(a)(ii) shall not apply;

(iii) notwithstanding anything in the preceding provisions of this section, such balancing charge, if any, shall be made on the buyer on any event occurring after the date of the sale as would have been made on the seller if the seller had continued to own the property and had done all such things and been allowed all such allowances or deductions in connection with the property as were done by or allowed to the buyer.

(b) The sum referred to in paragraph (a)(i) is—

(i) in the case of an industrial building or structure, the residue of the expenditure on the construction of that building or structure immediately before the sale, computed in accordance with section 277, and

(ii) in the case of machinery or plant, the amount of the expenditure on the provision of the machinery or plant still unallowed immediately before the sale, computed in accordance with section 292.

(6) (a) An election under subsection (5)(a) may not be made if—

(i) any of the parties to the sale is not resident in the State at the time of the sale, and

(ii) the circumstances are not at that time such that an allowance or charge under this Part is to be or might be made to or on that party in consequence of the sale.

(b) Except where referred to in paragraph (a), this section shall apply in relation to a sale notwithstanding that it is not fully applicable by reason of the non-residence of a party to the sale or otherwise.