

Charge to tax on sums received from sale of scheduled mineral assets. F(TPCM)A74 s11; CTA76 s140(1) and Sch2 Ptl par39; FA81 s9(e) 683.—(1) In this section—

“chargeable period” means an accounting period of a company or a year of assessment;

any reference to the sale of a right to a scheduled mineral asset includes a reference to the grant of a licence to work scheduled minerals.

(2) Where a person resident in the State sells any scheduled mineral asset and the net proceeds of the sale consist wholly or partly of a capital sum, the person shall, subject to this section, be charged to tax under Case IV of Schedule D for the chargeable period in which the sum is received by the person on an amount equal to that sum; but where the person is an individual who, not later than 24 months after the end of the year of assessment in which the sum is paid, elects by notice in writing to the inspector to be charged to tax for that year of assessment and for each of the 5 succeeding years of assessment on an amount equal to one-sixth of that sum, the person shall be so charged.

(3) (a) In this subsection, “tax” shall mean income tax, unless the seller of the scheduled mineral asset, being a company, would be within the charge to corporation tax in respect of any proceeds of the sale not consisting of a capital sum.

(b) Subject to paragraph (c), where a person not resident in the State sells any scheduled mineral asset and the net proceeds of the sale consist wholly or partly of a capital sum, then—

(i) the person shall be charged to tax in respect of that sum under Case IV of Schedule D for the chargeable period in which the sum is received by the person, and

(ii) section 238 shall apply to that sum as if it were an annual payment payable otherwise than out of profits or gains brought into charge to tax.

(c) Where the person referred to in paragraph (b) is an individual who, not later than 24 months after the end of the year of assessment in which the sum is paid elects by notice in writing to the Revenue Commissioners that the sum shall be treated for the purpose of tax for that year and for each of the 5 succeeding years as if one-sixth of that sum were included in his or her income chargeable to tax for each of those years respectively, it shall be so treated, and all such repayments and assessments of tax for each of those years shall be made as are necessary to give effect to the election; but—

(i) the election shall not affect the amount of tax to be deducted and accounted for under section 238,

(ii) where any sum is deducted under section 238, any adjustments necessary to give effect to the election shall be made by means of repayment of tax, and

(iii) those adjustments shall be made year by year and as if one-sixth of the sum deducted had been deducted in respect of tax for each year, and no repayment of, or of any part of, that portion of the tax

deducted which is to be treated as deducted in respect of tax for any year shall be made unless and until it is ascertained that the tax ultimately to be paid for that year is less than the amount of tax paid for that year.

(4) Where the scheduled mineral asset sold by a person was acquired by the person by purchase and the price paid consisted wholly or partly of a capital sum, subsections (2) and (3) shall apply as if any capital sum received by the person when the person sells the asset were reduced by the amount of that sum; but nothing in this subsection shall affect the amount of tax to be deducted and accounted for under section 238 by virtue of subsection (3), and where any sum is deducted under section 238 any adjustment necessary to give effect to this subsection shall be made by means of repayment of tax.

(5) Where by virtue of an order made by the Minister for the Marine and Natural Resources under section 14 of the Minerals Development Act, 1940 , scheduled minerals or rights to work such minerals are acquired and that Minister pays compensation to any person in respect of such acquisition, that person shall be deemed for the purposes of this section to have sold a scheduled mineral asset for a capital sum equal to the amount of compensation paid to that person, and subsections (2) to (4) shall apply to the compensation as they apply to a capital sum received in respect of a sale of a scheduled mineral asset.