

Charges on capital sums received for sale of patent rights. ITA67 s288; CTA76 s21(1) and Sch1 par38 757.—(1) (a) Subject to paragraphs (b) and (c), where a person resident in the State sells any patent rights and the net proceeds of the sale consist wholly or partly of a capital sum, that person shall, subject to this Chapter, be charged to tax under Case IV of Schedule D for the chargeable period in which the sum is received by that person and for successive chargeable periods, being charged in each period on the same fraction of the sum as the period is of 6 years (or such less fraction as has not already been charged).

(b) Where the person by notice in writing served on the inspector not later than 12 months after the end of the chargeable period in which the capital sum was received elects that the whole of that sum shall be charged to tax for the chargeable period in which the sum is received, it shall be charged to tax accordingly.

(c) Where the person by notice in writing served on the inspector not later than 12 months after the end of the chargeable period in which the capital sum was received applies to have the fraction referred to in paragraph (a) determined as being other than the same fraction as the chargeable period is of 6 years, then, if it appears to the Revenue Commissioners that hardship is likely to arise having regard to all the circumstances of the case unless a direction is given under this paragraph, they may direct that the fraction shall be the same fraction of the sum as the chargeable period is of a number of years other than 6 years, and that the charge shall be spread accordingly.

(2) (a) Where a person not resident in the State sells any patent rights and the net proceeds of the sale consist wholly or partly of a capital sum, and the patent is an Irish patent, then, subject to this Chapter—

(i) the person shall be chargeable to tax in respect of that sum under Case IV of Schedule D, 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.

(b) Where, not later than 12 months after the end of the year of assessment in which the sum referred to in paragraph (a) is paid, the person to whom it is paid, by notice in writing to the Revenue Commissioners, elects that the sum shall be treated for the purpose of income tax for that year and for each of the 5 succeeding years as if one-sixth of that sum were included in that person's income chargeable to tax for all 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.

(3) (a) In subsection (2), “tax” shall mean income tax, unless the seller of the patent rights, 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) Where paragraph (a) of subsection (2) applies to charge a company to corporation tax in respect of a sum paid to it, paragraph (b) of that subsection shall not apply; but—

(i) the company may, by notice in writing given to the Revenue Commissioners not later than 12 months after the end of the accounting period in which the sum is paid, elect that the sum shall be treated as arising rateably in the accounting periods ending not later than 6 years from the beginning of the accounting period in which the sum is paid (being accounting periods during which the company remains within the charge to corporation tax by virtue of subsection (2) (a)), and

(ii) there shall be made all such repayments of tax and assessments to tax as are necessary to give effect to any such election.

(4) Where the patent rights sold by a person, or the rights out of which the patent rights sold by a person were granted, were acquired by the person by purchase and the price paid consisted wholly or partly of a capital sum, subsections (1) to (3) shall apply as if any capital sum received by the person on the sale of the rights were reduced by the amount of that sum; but—

(a) where between the purchase and the sale the person has sold part of the patent rights acquired by the person and the net proceeds of that sale consist wholly or partly of a capital sum, the amount of the reduction to be made under this subsection in respect of the subsequent sale shall itself be reduced by the amount of that sum, and

(b) nothing in this subsection shall affect the amount of tax to be deducted and accounted for under section 238 by virtue of subsection (2) 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) This section shall apply in relation to any sale of part of any patent rights as it applies in relation to sales of patent rights.