

Deduction from consideration on disposal of certain assets. CGTA75 s51(1) and Sch4 par11(1) to (10A); FA89 s29; FA95 s76; FA96 s59 980.—(1) In this section—

“designated area” means an area designated by order under section 2 of the Continental Shelf Act, 1968 ;

“exploration or exploitation rights” has the same meaning as in section 13;

“shares” includes stock and any security.

(2) This section shall apply to assets that are—

(a) land in the State,

(b) minerals in the State or any rights, interests or other assets in relation to mining or minerals or the searching for minerals,

(c) exploration or exploitation rights in a designated area,

(d) shares in a company deriving their value or the greater part of their value directly or indirectly from assets specified in paragraph (a), (b) or (c), other than shares quoted on a stock exchange,

(e) shares, other than shares quoted on a stock exchange, to which section 584 applies, whether by virtue of that section or any other section, so that, as respects a person disposing of those shares, they are treated as the same shares as shares specified in paragraph (d), acquired as the shares so specified were acquired, and

(f) goodwill of a trade carried on in the State.

(3) This section shall not apply where the amount or value of the consideration in money or money's worth on a disposal does not exceed the sum of £100,000; but if an asset owned at one time by one person, being an asset to which this section would but for this subsection apply, is disposed of by that person in parts—

(a) to the same person, or

(b) to persons who are acting in concert or who are connected persons,

whether on the same or different occasions, the several disposals shall for the purposes of this subsection, but not for any other purpose, be treated as a single disposal.

(4) (a) Subject to paragraph (b), on payment of the consideration for acquiring an asset to which this section applies—

(i) the person by or through whom any such payment is made shall deduct from that payment a sum representing an amount of capital gains tax equal to 15 per cent of that payment,

(ii) the person to whom the payment is made shall allow such deduction on receipt of the residue of the payment, and

(iii) the person making the deduction shall, on proof of payment to the Revenue Commissioners of the amount so deducted, be acquitted and discharged of so much money as is represented by the deduction as if that sum had been actually paid to the person making the disposal.

(b) Where the person disposing of the asset produces to the person acquiring the asset a certificate issued under subsection (8) in relation to the disposal, no deduction referred to in paragraph (a) shall be made.

(5) Where any payment referred to in subsection (4) (a) is made by or on behalf of any person, that person shall forthwith deliver to the Revenue Commissioners an account of the payment and of the amount deducted from the payment, and the inspector shall, notwithstanding any other provision of the Capital Gains Tax Acts, assess and charge that person to capital gains tax for the year of assessment in which the payment was made on the amount of the payment at the rate of 15 per cent.

(6) Where, in relation to any payment referred to in subsection (4) (a), any person has made default in delivering an account required by this section, or where the inspector is not satisfied with the account, the inspector may estimate the amount of the payment to the best of his or her judgment and, notwithstanding section 31, may assess and charge that person to capital gains tax for the year of assessment in which the payment was made on the amount so estimated at the rate of 15 per cent.

(7) Where the amount of capital gains tax assessed and charged under subsection (5) or (6) is paid, appropriate relief shall, on a claim being made in that behalf, be given to the person chargeable in respect of the gain on the disposal, whether by discharge or repayment or otherwise.

(8) A person chargeable to capital gains tax on the disposal of an asset to which this section applies may apply to the inspector for a certificate that tax should not be deducted from the consideration for the disposal of the asset and that the person acquiring the asset should not be required to give notice to the Revenue Commissioners in accordance with subsection (9) (a), and, if the inspector is satisfied that the person making the application is the person making the disposal and that—

(a) that person is resident in the State,

(b) no amount of capital gains tax is payable in respect of the disposal, or

(c) the capital gains tax chargeable for the year of assessment for which that person is chargeable in respect of the disposal of the asset and the tax chargeable on any gain accruing in any earlier year of assessment (not being a year ending earlier than the 6th day of April, 1974) on a previous disposal of the asset has been paid,

the inspector shall issue the certificate to the person making the application and shall issue a copy of the certificate to the person acquiring the asset.

(9) (a) Where—

(i) after the 2nd day of June, 1995, a person acquires an asset to which this section applies and section 978 does not apply,

(ii) the consideration for acquiring the asset is of such a kind that the deduction mentioned in subsection (4) cannot be made out of the consideration, and

(iii) the person disposing of the asset does not, at or before the time at which the acquisition is made, produce to the person acquiring the asset a certificate under subsection (8) in relation to the disposal, the person acquiring the asset shall within 7 days of the time at which the acquisition is made—

(I) notify the Revenue Commissioners of the acquisition in a notice in writing containing particulars of—

(A) the asset acquired,

(B) the consideration for acquiring the asset,

(C) the market value of that consideration estimated to the best of that person's knowledge and belief, and

(D) the name and address of the person making the disposal,

and

(II) pay to the Collector-General an amount of capital gains tax equal to 15 per cent of the market value of the consideration so estimated.

(b) Capital gains tax which by virtue of paragraph (a) (II) is payable by a person acquiring an asset shall—

(i) be payable by that person in addition to any capital gains tax which by virtue of any other provision of the Capital Gains Tax Acts is payable by that person,

(ii) be due within 7 days of the time at which that person acquires the asset, and

(iii) be payable by that person without the making of an assessment;

but tax which has become so due may be assessed on the person acquiring the asset (whether or not it has been paid when the assessment is made) if that tax or any part of that tax is not paid on or before the due date.

(c) Where any person acquiring an asset has in pursuance of paragraph (a) (II) paid any amount of capital gains tax by reference to the market value of the consideration for acquiring the asset, that person shall be entitled to recover a sum of that amount from the person disposing of the asset as a simple contract debt in any court of competent jurisdiction; but where a copy of a certificate under subsection (8) is issued to the person acquiring the asset, being a copy of a certificate in relation to the disposal by which the person acquired the asset, that person—

(i) shall not be entitled thereafter to so recover that sum, and

(ii) shall be repaid that amount of tax.

(d) This section shall apply in relation to the acquisition of an asset by 2 or more persons with any necessary modifications and subject to the condition that each such person shall be liable to be assessed and charged in respect only of such part of the amount of capital gains tax payable by those persons by virtue of paragraph (b) as bears to the whole of such tax the same proportion as the part of the asset acquired by that person bears to the whole of the asset.

(10) Notwithstanding sections 979 and 1042, where an amount of capital gains tax is assessed and charged pursuant to this section, such amount shall be due and payable on the day after the day on which the assessment is made.

(11) (a) Subject to paragraph (b), where there is a disposal of assets by virtue of a capital sum being derived from those assets, the person paying the capital sum shall, notwithstanding that no asset is acquired by that person, be treated for the purposes of this section as acquiring the assets disposed of for a consideration equal to the capital sum, whether that sum is paid in money or money's worth, and this section shall, subject to any necessary modifications, apply accordingly.

(b) Paragraph (a) shall not apply where there is a disposal of an asset by virtue of a capital sum being derived from the asset under a policy of insurance of the risk of any kind of damage to the asset.