

PART 33 Anti-Avoidance

CHAPTER 1 Transfer of assets abroad

Charge to income tax on transfer of assets abroad. FA74 s57 preamble and (1) to (7) and (8)(a), (b), (c), (e) and (f) 806.—(1) In this section—

“assets” includes property or rights of any kind;

“associated operation”, in relation to any transfer, means an operation of any kind effected by any person in relation to any of the assets transferred or any assets representing whether directly or indirectly any of the assets transferred, or to the income arising from any such assets, or to any assets representing whether directly or indirectly the accumulations of income arising from any such assets;

“benefit” includes a payment of any kind;

“company” means any body corporate or unincorporated association;

“transfer”, in relation to rights, includes the creation of those rights.

(2) For the purposes of this section—

(a) any body corporate incorporated outside the State shall be treated as if it were resident out of the State whether it is so resident or not,

(b) a reference to an individual shall be deemed to include the husband or wife of the individual, and

(c) references to assets representing any assets, income or accumulations of income include references to shares in or obligations of any company to which, or obligations of any other person to whom, those assets, that income or those accumulations are or have been transferred.

(3) This section shall apply for the purpose of preventing the avoidance by individuals ordinarily resident in the State of liability to income tax by means of transfers of assets by virtue or in consequence of which, either alone or in conjunction with associated operations, income becomes payable to persons resident or domiciled out of the State.

(4) Where by virtue or in consequence of any such transfer, either alone or in conjunction with associated operations, such an individual has power to enjoy (within the meaning of this section), whether forthwith or in the future, any income of a person resident or domiciled out of the State which, if it were income of that individual received by that individual in the State, would be chargeable to tax by deduction or otherwise, that income shall, whether it would or would not have been chargeable to tax apart from this section, be deemed to be income of that individual for the purposes of the Income Tax Acts.

(5) (a) In this subsection, “capital sum” means—

(i) any sum paid or payable by means of loan or repayment of a loan, and

(ii) any other sum paid or payable otherwise than as income, being a sum not paid or payable for full consideration in money or money's worth.

(b) Where, whether before or after any such transfer, such an individual receives or is entitled to receive any capital sum the payment of which is in any way connected with the transfer or any associated operation, any income which, by virtue or in consequence of the transfer, either alone or in conjunction with associated operations, has become the income of a person resident or domiciled out of the State shall, whether it would or would not have been chargeable to tax apart from this section, be deemed to be the income of that individual for the purposes of the Income Tax Acts.

(6) An individual shall for the purposes of this section be deemed to have power to enjoy income of a person resident or domiciled out of the State where—

(a) the income is in fact so dealt with by any person as to be calculated, at some point of time and whether in the form of income or not, to enure for the benefit of the individual,

(b) the receipt or accrual of the income operates to increase the value to the individual of any assets held by the individual or for the individual's benefit,

(c) the individual receives or is entitled to receive at any time any benefit provided or to be provided out of that income or out of moneys which are or will be available for the purpose by reason of the effect or successive effects of the associated operations on that income and on any assets which directly or indirectly represent that income,

(d) the individual has power, by means of the exercise of any power of appointment or power of revocation or otherwise, to obtain for himself or herself, whether with or without the consent of any other person, the beneficial enjoyment of the income, or may in the event of the exercise of any power vested in any other person become entitled to the beneficial enjoyment of the income, or

(e) the individual is able, in any manner whatever and whether directly or indirectly, to control the application of the income.

(7) In determining whether an individual has power to enjoy income within the meaning of this section, regard shall be had to the substantial result and effect of the transfer and any associated operations, and all benefits which may at any time accrue to the individual (whether or not the individual has rights at law or in equity in or to those benefits) as a result of the transfer and any associated operations shall be taken into account irrespective of the nature or form of the benefits.

(8) Subsections (4) and (5) shall not apply where the individual shows in writing or otherwise to the satisfaction of the Revenue Commissioners—

(a) that the purpose of avoiding liability to taxation was not the purpose or one of the purposes for which the transfer or associated operations or any of them was effected, or

(b) that the transfer and any associated operations were bona fide commercial transactions and were not designed for the purpose of avoiding liability to taxation.

(9) In any case where a person is aggrieved by a decision taken by the Revenue Commissioners in exercise of their functions under subsection (8), the person shall be entitled to appeal to the Appeal Commissioners against the decision of the Revenue Commissioners and the Appeal Commissioners shall hear and determine the appeal as if it were an appeal against an assessment to tax, and the provisions of the Income Tax Acts relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law shall apply accordingly with any necessary modifications.