

Depreciatory transactions in group. CTA76 s138 621.—(1) For the purposes of this section—

“securities” includes any loan stock or similar security whether secured or unsecured;

references to the disposal of assets include references to any method by which one company which is a member of a group appropriates the goodwill of another member of the group;

a “group of companies” may consist of companies some or all of which are not resident in the State.

(2) References in this section to the disposal of shares or securities include references to the occasion of the making of a claim under section 538 (2) that the value of shares or securities has become negligible, and references to a person making a disposal shall be construed accordingly.

(3) This section shall apply as respects a disposal of shares in or securities of a company (in this section referred to as an “ultimate disposal”) if the value of the shares or securities has been materially reduced by a depreciatory transaction effected on or after the 6th day of April, 1974, and for this purpose “depreciatory transaction” means—

(a) any disposal of assets at other than market value by one member of a group of companies to another, or

(b) any other transaction satisfying the conditions of subsection (4); but a transaction shall not be treated as a depreciatory transaction to the extent that it consists of a payment which is required to be or has been taken into account, for the purposes of corporation tax on chargeable gains, in computing a chargeable gain or allowable loss accruing to the person making the ultimate disposal.

(4) The conditions referred to in subsection (3)(b) are—

(a) that the company, the shares in which or securities of which are the subject of the ultimate disposal, or any 75 per cent subsidiary of that company, was a party to the transaction, and

(b) that the parties to the transaction were or included 2 or more companies which at the time of the transaction were members of the same group of companies.

(5) Without prejudice to the generality of subsection (3), the cancellation of any shares in or securities of one member of a group of companies under section 72 of the Companies Act, 1963, shall, to the extent that immediately before the cancellation those shares or securities were the property of another member of the group, be taken to be a transaction fulfilling the conditions in subsection (4).

(6) Where the person making the ultimate disposal is or has at any time been a member of the group of companies referred to in subsection (3) or (4), any allowable loss accruing on the disposal shall be reduced to such extent as appears to the inspector, or on appeal the Appeal Commissioners, or on a rehearing by a judge of the Circuit Court, that judge, to be just and reasonable having regard to the depreciatory

transaction; but, if the person making the ultimate disposal is not a member of that group when disposing of the shares or securities, no reduction of the loss shall be made by reference to a depreciatory transaction which took place when that person was not a member of that group.

(7) The inspector, the Appeal Commissioners or the judge of the Circuit Court shall make the decision under subsection (6) on the basis that the allowable loss ought not to reflect any diminution in the value of the company's assets attributable to a depreciatory transaction, but allowance may be made for any other transaction on or after the 6th day of April, 1974, which has enhanced the value of the company's assets and depreciated the value of the assets of any other member of the group.

(8) (a) Where under subsection (6) a reduction is made in an allowable loss, any chargeable gain accruing on a disposal of the shares in or securities of any other company which was a party to the depreciatory transaction by reference to which the reduction was made, being a disposal not later than 10 years after the depreciatory transaction, shall be reduced to such extent as appears to the inspector, or on appeal to the Appeal Commissioners, or on a rehearing by a judge of the Circuit Court, that judge, to be just and reasonable having regard to the effect of the depreciatory transaction on the value of those shares or securities at the time of their disposal.

(b) Notwithstanding paragraph (a), the total amount of any one or more reductions in chargeable gains made by reference to a depreciatory transaction shall not exceed the amount of the reductions in allowable losses made by reference to that depreciatory transaction.

(c) All such adjustments, whether by means of discharge or repayment of tax or otherwise, as are required to give effect to this subsection may be made at any time.