Attribution to shareholders of chargeable gains accruing to non-resident company. CGTA75 s36; CTA76 s129(6)(c) and (7), s140(2) and s159 and Sch2 PtII pars4 and 5 590.—(1) This section shall apply as respects a chargeable gain accruing to a company—

(a) which is not resident in the State, and

(b) which would be a close company if it were resident in the State.

(2) Subject to this section, any person who at the time when the chargeable gain accrues to the company—

(a) is resident or ordinarily resident in the State,

(b) if an individual, is domiciled in the State, and

(c) holds shares in the company,

shall be treated for the purposes of the Capital Gains Tax Acts as if a part of the chargeable gain had accrued to that person.

(3) The part of the chargeable gain referred to in subsection (2) shall be equal to the proportion of the assets of the company to which that person would be entitled on a liquidation of the company at the time when the chargeable gain accrues to the company.

(4) This section shall not apply in relation to—

(a) any amount in respect of the chargeable gain which is distributed, whether by means of dividend or distribution of capital or on the dissolution of the company, to persons holding shares in the company or to creditors of the company within 2 years from the time when the chargeable gain accrued to the company,

(b) a chargeable gain accruing on the disposal of assets, being tangible property, whether movable or immovable, or a lease of such property, where the property was used only for the purposes of a trade carried on by the company wholly outside the State,

(c) a chargeable gain accruing on the disposal of currency or of a debt within section 541 (6), where the currency or debt is or represents money in use for the purposes of a trade carried on by the company wholly outside the State, or

(d) a chargeable gain in respect of which the company is chargeable to capital gains tax by virtue of subsection (3) or (7) of section 29 or to corporation tax by virtue of section 25 (2)(b).

(5) Subsection (4)(a) shall not prevent the making of an assessment in pursuance of this section but, if by virtue of subsection (4)(a) this section is excluded, all such adjustments, whether by means of repayment or discharge of tax or otherwise, shall be made as will give effect to subsection (4)(a).

(6) The amount of capital gains tax paid by a person in pursuance of subsection (2) (in so far as not reimbursed by the company) shall be allowable as a deduction in the computation under the Capital Gains Tax Acts of a gain accruing on the disposal by the person of the shares by reference to which the tax was paid.

(7) To the extent that it would reduce or extinguish chargeable gains accruing by virtue of this section to a person in a year of assessment, this section shall apply in relation to a loss accruing to the company on the disposal of an asset in that year of assessment as it would apply if a gain instead of a loss had accrued to the company on the disposal, but shall only so apply in relation to that person, and, subject to this subsection, this section shall not apply in relation to a loss accruing to the company.

(8) Where the person owning any of the shares in the company at the time when the chargeable gain accrued to the company is itself a company which is not resident in the State but which would be a close company if it were resident in the State, an amount equal to the amount apportioned under subsection (3) out of the chargeable gain to the shares so owned shall be apportioned among the issued shares of the second-mentioned company, and the holders of those shares shall be treated in accordance with subsection (2), and so on through any number of companies.

(9) Where any tax payable by any person by virtue of subsection (2) is paid by the company to which the chargeable gain accrues, or in a case under subsection (8) is paid by any such other company, the amount so paid shall not, for the purposes of income tax or for the purposes of the Capital Gains Tax Acts, be regarded as a payment to the person by whom the tax was originally payable.

(10) Where any tax payable by any company by virtue of subsection (2) is paid by the company to which the chargeable gain accrues, or in a case under subsection (8) is paid by any such other company, the amount so paid shall not for the purposes of corporation tax be regarded as a payment to the company by which the tax was originally payable.

(11) (a) In this subsection—

“group” shall be construed in accordance with subsections (1) (excluding paragraph (a)), (3) and (4) of section 616;

“non-resident group” of companies—

(i) in the case of a group none of the members of which is resident in the State, means that group, and

(ii) in the case of a group 2 or more members of which are not resident in the State, means the members not resident in the State.

(b) For the purposes of this section—

(i) sections 617 to 620 shall apply in relation to non-resident companies which are members of a non-resident group of companies as they apply in relation to companies resident in the State which are members of a group of companies, and

(ii) sections 623 and 625 shall apply as if for any reference in those sections to a group of companies there were substituted a reference to a non-resident group of companies, and as if references to companies were references to companies not resident in the State.