

Disposals of material interests in non-qualifying offshore funds. FA90 s63 741.—(1) This Chapter shall apply to a disposal by any person of an asset if at the time of the disposal—

(a) the asset constitutes a material interest in an offshore fund which is or has at any material time been a non-qualifying offshore fund, or

(b) the asset constitutes an interest in a company resident in the State or in a unit trust scheme, the trustees of which are at that time resident in the State and at a material time on or after the 1st day of January, 1991, the company or unit trust scheme was a non-qualifying offshore fund and the asset constituted a material interest in that fund,

and, for the purpose of determining whether the asset disposed of is within paragraph (b), subsection (3) of section 584 shall apply as it applies for the purposes of the Capital Gains Tax Acts.

(2) Subject to subsections (3) to (7) and section 742, there shall be a disposal of an asset for the purposes of this Chapter if there would be such a disposal for the purposes of the Capital Gains Tax Acts.

(3) Notwithstanding anything in paragraph (b) of section 573 (2), where a person dies and the assets of which he or she was competent to dispose include an asset which is or has at any time been a material interest in a non-qualifying offshore fund, then, for the purposes of this Chapter ) that interest shall, immediately before the acquisition referred to in paragraph (a) of section 573 (2), be deemed to be disposed of by the deceased for such a consideration as is mentioned in that paragraph; but nothing in this subsection shall affect the determination in accordance with subsection (1) of the question whether that deemed disposal is one to which this Chapter applies.

(4) Subject to subsection (3), section 573 shall apply for the purposes of this Chapter as it applies for the purposes of the Capital Gains Tax Acts, and the reference in that subsection to the assets of which a deceased person was competent to dispose shall be construed in accordance with subsection (1) of that section.

(5) Notwithstanding anything in section 586 or 587, in any case where—

(a) a company (in this subsection referred to as “the acquiring company”) issues shares or debentures in exchange for shares in or debentures of another company (in this subsection referred to as “the acquired company”) and the acquired company is or was at a material time a non qualifying offshore fund and the acquiring company is not such a fund, or

(b) persons are to be treated in consequence of an arrangement as exchanging shares, debentures or other interests in or of an entity which is or was at a material time a non qualifying offshore fund for assets which do not constitute interests in such a fund,

then, section 586 (1) shall not apply for the purposes of this Chapter.

(6) In any case where (apart from subsection (5)) section 586 (1) would apply, the exchange concerned of shares, debentures or other interests in or of a non-qualifying fund shall for the purposes of this Chapter constitute a disposal of interests in the offshore fund for a consideration equal to their market value at the time of the exchange.

(7) (a) In this subsection, “relevant consideration” means consideration which, assuming the application to the disposal of the Capital Gains Tax Acts, would be taken into account in determining the amount of the gain or loss accruing on the disposal, whether that consideration was given by or on behalf of the person making the disposal or by or on behalf of a predecessor in title of the person making the disposal whose acquisition cost represents directly or indirectly the whole or any part of the acquisition cost of the person making the disposal.

(b) For the purposes of this section, a material time in relation to the disposal of an asset shall be any time on or after—

(i) the 6th day of April, 1990, where the asset was acquired on or before that date, or

(ii) where the asset was not so acquired, the earliest date on which any relevant consideration was given for the acquisition of the asset.