

Postponement of charge on deemed disposal under section 627. FA97 s43 628.—(1) (a) In this section—

“deemed disposal” means a disposal which by virtue of section 627 (3) is deemed to have been made;

“foreign assets” of a company means any assets of the company which immediately after the relevant time are situated outside the State and are used in or for the purposes of a trade carried on by the company outside the State.

(b) For the purposes of this section, a company shall be a 75 per cent subsidiary of another company if and so long as not less than 75 per cent of its ordinary share capital ) is owned directly by that other company.

(2) Where—

(a) immediately after the relevant time a company (in this section referred to as “the company”) to which this section applies by virtue of section 627 is a 75 per cent subsidiary of another company (in this section referred to as “the principal company”) which is resident in the State, and

(b) the principal company and the company jointly so elect by notice in writing given to the inspector within 2 years after the relevant time,

the Capital Gains Tax Acts shall apply subject to subsections (3) to (6).

(3) Any allowable losses accruing to the company on a deemed disposal of foreign assets shall be set off against the chargeable gains so accruing and—

(a) that deemed disposal shall be treated as giving rise to a single chargeable gain equal to the aggregate of those gains after deducting the aggregate of those losses, and

(b) the whole of that single chargeable gain shall be treated as not accruing to the company on that disposal but an equivalent amount (in this section referred to as “the postponed gain”) shall be taken into account in accordance with subsections (4) and (5).

(4) (a) In this subsection, “the appropriate proportion” means the proportion which the chargeable gain taken into account in determining the postponed gain in respect of the part of the relevant assets disposed of bears to the aggregate of the chargeable gains so taken into account in respect of the relevant assets held immediately before the time of the disposal.

(b) Where at any time within 10 years after the relevant time the company disposes of any assets (in this subsection referred to as “relevant assets”) the chargeable gains on which were taken into account in determining the postponed gain, there shall be deemed to accrue to the principal company as a chargeable gain at that time the whole or the appropriate proportion of the postponed gain in so far as not already taken into account under this subsection or subsection (5).

(5) Where at any time within 10 years after the relevant time—

(a) the company ceases to be a 75 per cent subsidiary of the principal company, or

(b) the principal company ceases to be resident in the State,

there shall be deemed to accrue to the principal company as a chargeable gain—

(i) where paragraph (a) applies, at that time, and

(ii) where paragraph (b) applies, immediately before that time,

the whole of the postponed gain in so far as not already taken into account under this subsection or subsection (4).

(6) Where at any time—

(a) the company has allowable losses which have not been allowed as a deduction from chargeable gains, and

(b) a chargeable gain accrues to the principal company under subsection (4) or (5),

then, if and to the extent that the principal company and the company jointly so elect by notice in writing given to the inspector within 2 years after that time, those losses shall be allowed as a deduction from that gain.