

PART 28 Purchase and Sale of Securities

CHAPTER 1 Purchase and sale of securities

Interpretation and application). ITA67 s367; F(MP)A68 s3(2) and Sch Ptl; CTA76 s140(1) and Sch2 Ptl
par17 748.—(1) In this Chapter and in Schedule 21—

“distribution” has the same meaning as in the Corporation Tax Acts;

“interest” includes a distribution and any dividend which is not such a distribution and, in applying references to interest in relation to such a distribution, “gross interest” or “gross amount” means the distribution together with the tax credit to which the recipient of the distribution is entitled in respect of it and “net interest” means the distribution exclusive of any such tax credit;

“person” includes any body of persons, and references to a person entitled to any exemption from income tax include, in a case of an exemption expressed to apply to income of a trust or fund, references to the persons entitled to make claims for the granting of that exemption;

“securities” includes stocks and shares;

securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred.

(2) Subject to this section, this Chapter shall apply in the case of a purchase by a person (in this Chapter referred to as “the first buyer”) of any securities and their subsequent sale by the first buyer, where the result of the transaction is that interest becoming payable in respect of the securities (in this Chapter referred to as “the interest”) is receivable by the first buyer.

(3) This Chapter shall not apply in the case where—

(a) the time elapsing between the purchase by the first buyer and the first buyer's taking steps to dispose of the securities exceeds 6 months, or

(b) that time exceeds one month and in the opinion of the Revenue Commissioners the purchase and sale were each effected at the current market price and the sale was not effected in pursuance of an agreement or arrangement made before or at the time of the purchase.

(4) An appeal shall lie to the Appeal Commissioners with respect to any opinion of the Revenue Commissioners under subsection (3)(b) in the like manner as an appeal would lie against an assessment to income tax, and the provisions of the Income Tax Acts relating to appeals shall apply accordingly.

(5) The reference in subsection (3) to the first buyer taking steps to dispose of the securities shall be construed—

(a) if the first buyer sold the securities in the exercise of an option the first buyer had acquired, as a reference to the first buyer's acquisition of the option, and

(b) in any other case, as a reference to the first buyer selling the securities.

(6) (a) For the purposes of this Chapter but subject to paragraph (b), a sale of securities similar to, and of the like nominal amount as, securities previously bought (in this subsection referred to as “the original securities”) shall be equivalent to a sale of the original securities and subsection (5) shall apply accordingly, and, where the first buyer bought parcels of similar securities at different times, a subsequent sale of any of the securities shall, in so far as may be, be related to the last of the parcels to be bought, and then to the last but one, and so on.

(b) A person shall be under no greater liability to tax by virtue of this subsection than would have been the case if instead of selling the similar securities the person had sold the original securities.

(7) Where, at the time when a trade is or is deemed to be set up and commenced, any securities form part of the trading stock belonging to the trade, those securities shall be treated for the purposes of this section as having been sold at that time in the open market by the person to whom they belonged immediately before that time and as having been purchased at that time in the open market by the person thereafter engaged in carrying on the trade, and, subject to this subsection, where there is a change in the persons engaged in carrying on a trade which is not a change on which the trade is deemed to be discontinued, this section shall apply in relation to the person so engaged after the change as if anything done to or by that person's predecessor had been done to or by that person.