

Transactions between connected persons. CGTA75 s33(1) to (6); FA89 s87 549.—(1) This section shall apply for the purposes of the Capital Gains Tax Acts where a person acquires an asset and the person making the disposal is connected with the person acquiring the asset.

(2) Without prejudice to the generality of section 547, the person acquiring the asset and the person making the disposal shall be treated as parties to a transaction otherwise than by means of a bargain made at arm's length.

(3) Where on the disposal a loss accrues to the person making the disposal, the loss shall not be deductible except from a chargeable gain accruing to that person on some other disposal of an asset to the person acquiring the asset mentioned in subsection (1), being a disposal made at a time when they are connected persons.

(4) Subsection (3) shall not apply to a disposal by means of a gift in settlement if the gift and the income from it are wholly or primarily applicable for educational, cultural or recreational purposes, and the persons benefiting from the application for those purposes are confined to members of an association of persons for whose benefit the gift was made, not being persons all or most of whom are connected persons.

(5) Where the asset mentioned in subsection (1) is an option to enter into a sale or other transaction given by the person making the disposal, a loss accruing to a person acquiring the asset shall not be an allowable loss unless it accrues on a disposal of the option at arm's length to a person not connected with the person acquiring the asset.

(6) Where the asset mentioned in subsection (1) is subject to any right or restriction enforceable by the person making the disposal or by a person connected with that person, then (where the amount of the consideration for the acquisition is in accordance with subsection (2) deemed to be equal to the market value of the asset), that market value shall be what its market value would be if not subject to the right or restriction, reduced by the lesser of—

(a) the market value of the right or restriction, and

(b) the amount by which its extinction would enhance the value of the asset to its owner.

(7) Where the right or restriction referred to in subsection (6)—

(a) is of such a nature that its enforcement would or might effectively destroy or substantially impair the value of the asset without bringing any countervailing advantage either to the person making the disposal or a person connected with that person,

(b) is an option or other right to acquire the asset, or

(c) in the case of incorporeal property, is a right to extinguish the asset in the hands of the person giving the consideration by forfeiture or merger or otherwise,

then, the market value of the asset shall be determined, and the amount of the gain accruing on the disposal shall be computed, as if the right or restriction did not exist.

(8) (a) Where a person disposes of an asset to another person in such circumstances that—

(i) subsection (7) would but for this subsection apply in determining the market value of the asset, and

(ii) the person is not chargeable to capital gains tax under section 29 or 30 in respect of any gain accruing on the person's disposal of the asset,

then, as respects any subsequent disposal of the asset by the other person, that other person's acquisition of the asset shall for the purposes of the Capital Gains Tax Acts be deemed to be for an amount equal to the market value of the asset determined as if subsection (7) had not been enacted.

(b) This subsection shall apply—

(i) to disposals made on or after the 25th day of January, 1989, and

(ii) for the purposes of the determination of any deduction to be made from a chargeable gain accruing on or after the 25th day of January, 1989, in respect of an allowable loss, notwithstanding that the loss accrued or but for this section would have accrued on a disposal made before that day.

(9) Subsections (6) and (7) shall not apply to a right of forfeiture or other right exercisable on breach of a covenant contained in a lease of land or other property, or to any right or restriction under a mortgage or other charge.