

Market value of certain shares in private companies. CATA 1976 s16 27.—(1) In this section—

“group of shares”, in relation to a private company, means the aggregate of the shares in the company of the donee or successor, the relatives of the donee or successor, nominees of the donee or successor, nominees of relatives of the donee or successor, and the trustees of a settlement whose objects include the donee or successor or relatives of the donee or successor;

“nominee” includes a person who may be required to exercise that person's voting power on the directions of, or who holds shares directly or indirectly on behalf of, another person;

“private company” means a body corporate (wherever incorporated) which—

(a) is under the control of not more than 5 persons, and

(b) is not a company which would fall within section 431 of the Taxes Consolidation Act 1997 if the words “private company” were substituted for the words “close company” in subsection (3) of that section, and if the words “are beneficially held by a company which is not a private company” were substituted for the words of paragraph (a) of subsection (6) of that section;

“share”, in relation to a private company and in addition to the interpretation of “share” in section 2 (1), includes every debenture, or loan stock, issued otherwise than as part of a transaction which is wholly and exclusively a bona fide commercial transaction.

(2) (a) The market value of each share in a private company which (after the taking of the gift or of the inheritance) is, on the date of the gift or on the date of the inheritance, a company controlled by the donee or successor, shall be ascertained by the Commissioners, for the purposes of tax, as if, on the date on which the market value is to be ascertained, it formed an apportioned part of the market value of a group of shares in that company, such apportionment, as between shares of a particular class, to be by reference to nominal amount, and, as between different classes of shares, to have due regard to the rights attaching to each of the different classes.

(b) For the purpose of ascertaining the market value of a share in a private company in the manner described in paragraph (a), the benefit to any private company (in this paragraph referred to as “the first-mentioned company”) by virtue of its ownership of an interest in shares in another private company (in this paragraph referred to as “the second-mentioned company”) is, where each of the companies so connected is a company which (after the taking of the gift or of the inheritance) is, on the date of the gift or on the date of the inheritance, a company controlled by the donee or successor, deemed to be—

(i) such benefit as would be appropriate to the ownership of that interest if the second-mentioned company were under the control of the first-mentioned company in the same manner as (on the date on which the market value is to be ascertained) the second-mentioned company is under the control of the following, that is, the first-mentioned company, the donee or successor, the relatives of the donee or successor, nominees of the donee or successor, nominees of relatives of the donee or successor, and the trustees of a settlement

whose objects include the donee or successor or relatives of the donee or successor, or

(ii) the actual benefit appropriate to the ownership of that interest,

whichever is the greater.

(3) In this section, a reference to a company controlled by the donee or successor is a reference to a company that is under the control of any one or more of the following, that is, the donee or successor, the relatives of the donee or successor, nominees of the donee or successor, nominees of relatives of the donee or successor, and the trustees of a settlement whose objects include the donee or successor or relatives of the donee or successor; and for the purposes of this section, a company which is so controlled by the donee or successor shall be regarded as being itself a relative of the donee or successor.

(4) For the purposes of this section—

(a) a company is deemed to be under the control of not more than 5 persons if any 5 or fewer persons together exercise, or are able to exercise, or are entitled to acquire control, whether direct or indirect, of the company and for this purpose—

(i) persons who are relatives of any other person together with that other person,

(ii) persons who are nominees of any other person together with that other person,

(iii) persons in partnership, and

(iv) persons interested in any shares or obligations of the company which are subject to any trust or are part of the estate of a deceased person,

shall respectively be treated as a single person, and

(b) a person is deemed to have control of a company at any time if—

(i) that person then had control of the powers of voting on all questions, or on any particular question, affecting the company as a whole, which, if exercised, would have yielded a majority of the votes capable of being exercised on such questions or question, or could then have obtained such control by an exercise at that time of a power exercisable by that person or at that person's direction or with that person's consent,

(ii) that person then had the capacity, or could then by an exercise of a power exercisable by that person or at that person's direction or with that person's consent obtain the capacity, to exercise or to control the exercise of any of the following powers, that is:

(I) the powers of a board of directors of the company,

(II) powers of a governing director of the company,

(III) power to nominate a majority of the directors of the company or a governing director of the company,

(IV) the power to veto the appointment of a director of the company, or

(V) powers of a like nature;

(iii) that person then had a right to receive, or the receipt of, more than one-half of the total amount of the dividends of the company, whether declared or not, and for the purposes of this subparagraph, "dividend" is deemed to include interest on any debentures of the company, or

(iv) that person then had an interest in the shares of the company of an aggregate nominal value representing one-half or more of the aggregate nominal value of the shares of the company.