

Chargeable gains accruing on disposals by liquidators and certain other persons. FA83 s56 571.—(1) In this section—

“accountable person” means—

(a) a liquidator of a company, or

(b) any person entitled to an asset by means of security or to the benefit of a charge or encumbrance on an asset or, as the case may be, any person appointed to enforce or give effect to the security, charge or encumbrance;

“the company” has the meaning assigned to it by subsection (6);

“the debtor” has the meaning assigned to it by subsection (5);

“referable capital gains tax” has the meaning assigned to it by subsection (2);

“referable corporation tax” has the meaning assigned to it by subsection (3);

“relevant disposal” has the same meaning as in section 648.

(2) In this section—

(a) in a case where no chargeable gains other than the chargeable gains mentioned in subsection (5)(a) (in this subsection referred to as “the referable gains”) accrued to the debtor in the year of assessment, “referable capital gains tax” means the amount of capital gains tax which apart from subsection (5) would be assessable on the debtor in respect of the referable gains;

(b) in a case where, in addition to the referable gains, other chargeable gains accrued to the debtor in the year of assessment and, in charging all of those gains to capital gains tax without regard to subsection (5), the same rate of tax would apply, and either—

(i) none of the disposals on which the chargeable gains accrued is a relevant disposal, or

(ii) each of the disposals is a relevant disposal,

“referable capital gains tax” means an amount of tax determined by the formula—

$$A / B \times C$$

where—

A is the amount of capital gains tax which apart from subsection (5) would be assessable on the debtor

in respect of the referable gains if no other chargeable gains accrued to the debtor in the year of assessment and if no deductions or reliefs were to be allowed against the referable gains,

B is the amount of capital gains tax which apart from subsection (5) would be assessable on the debtor in respect of all chargeable gains, including the referable gains, which accrued to the debtor in the year of assessment, if no deductions or reliefs were to be allowed against those chargeable gains, and

C is the amount of capital gains tax which apart from subsection (5) would be assessable on the debtor in respect of the total amount of chargeable gains, including the referable gains, which accrued to the debtor in the year of assessment;

(c) in any other case, “referable capital gains tax” means the amount of capital gains tax which apart from subsection (5) and taking into account—

(i) all other chargeable gains accruing to the debtor in the year of assessment, and

(ii) where appropriate, sections 546 (6), 601 (3) and 653,

would be the amount of capital gains tax appropriate to the referable gains.

(3) In this section—

(a) in a case where no chargeable gains other than—

(i) the chargeable gains mentioned in subsection (6)(a) (in this subsection referred to as “the referable gains”), or

(ii) any chargeable gains accruing on a relevant disposal,

accrued to the company in the accounting period, “referable corporation tax” means the amount of capital gains tax which apart from subsection (6) would be assessable on the company in respect of the referable gains on the assumptions that—

(I) notwithstanding any provision to the contrary in the Corporation Tax Acts, capital gains tax was to be charged in respect of the referable gains in accordance with the Capital Gains Tax Acts, and

(II) accounting periods were years of assessment,

or, if it is less, the amount of corporation tax which apart from subsection (6) would be assessable on the company for the accounting period;

(b) in a case where, in addition to the referable gains, other chargeable gains (not being chargeable gains accruing on a relevant disposal) accrued to the company in the accounting period and, on the assumptions made in paragraph (a), in charging all of those gains to capital gains tax without regard to subsection (6), the same rate of tax would apply, “referable corporation tax” means an amount of tax

determined by the formula—

$$D / E \times F$$

where—

D is the amount of capital gains tax which, apart from subsection (6) and on the assumptions made in paragraph (a), would be assessable on the company in respect of the referable gains if no other chargeable gains accrued to the company in the accounting period and if no deductions or reliefs were to be allowed against the referable gains,

E is the amount of capital gains tax which, apart from subsection (6) and on the assumptions made in paragraph (a), would be assessable on the company in respect of all chargeable gains including the referable gains (but not including chargeable gains accruing on a relevant disposal) which accrued to the company in the accounting period, if no deductions or reliefs were to be allowed against those chargeable gains, and

F is the amount (in this subsection referred to as “the notional amount”) of capital gains tax which apart from subsection (6) would in accordance with section 78 (2) be calculated in relation to the company for the accounting period in respect of all chargeable gains including the referable gains or, if it is less, the amount of corporation tax which apart from subsection (6) would be assessable on the company for the accounting period;

(c) (i) in any other case, “referable corporation tax” means, subject to subparagraph (ii), the amount of capital gains tax which, apart from subsection (6) and on the assumptions made in paragraph (a), and taking into account—

(I) all other chargeable gains (not being chargeable gains accruing on a relevant disposal) accruing to the company in the accounting period, and

(II) where appropriate, sections 546 (6) and 653,

would be the amount of capital gains tax appropriate to the referable gains;

(ii) in any case in which subparagraph (i) applies, if the notional amount is greater than the amount of corporation tax which apart from subsection (6) would be assessable on the company for the accounting period, “referable corporation tax” shall mean an amount determined by the formula—

$$G / H \times K$$

where—

G is the amount which under subparagraph (i) would be the referable corporation tax,

H is the notional amount, and

K is the amount of corporation tax which apart from subsection (6) would be assessable on the company for the accounting period.

(4) (a) In any case where, in calculating an amount of referable capital gains tax or referable corporation tax under subsection (2)(c) or (3)(c), deductions or reliefs were to be allowed against chargeable gains accruing in a year of assessment or in an accounting period and apart from this subsection those deductions or reliefs (or part of them) would be set against 2 or more chargeable gains chargeable at the same rate of capital gains tax, then, those deductions or reliefs (or, as the case may be, that part of them) shall, in so far as is necessary to calculate the amount of referable capital gains tax or referable corporation tax, be apportioned between the chargeable gains chargeable at the same rate in proportion to the amounts of those chargeable gains.

(b) In the case of chargeable gains accruing to a company (not being chargeable gains accruing on a relevant disposal), any reference in paragraph (a) to a rate of tax shall be construed as a reference to the rate of capital gains tax which would be applicable to those gains on the assumptions made in subsection (3)(a).

(5) Where section 537 (2) or 570 applies in respect of the disposal of an asset in a year of assessment by an accountable person, then, notwithstanding any provision of the Capital Gains Tax Acts—

(a) any referable capital gains tax in respect of any chargeable gains which accrue on the disposal shall be assessable on and recoverable from the accountable person,

(b) the referable capital gains tax shall be treated as a necessary disbursement out of the proceeds of the disposal and shall be paid by the accountable person out of those proceeds, and

(c) referable capital gains tax paid by the accountable person shall discharge a corresponding amount of the liability to capital gains tax, for the year of assessment in which the disposal is made, of the person (in this section referred to as “the debtor”) who apart from this subsection is the chargeable person in relation to the disposal.

(6) Where section 78 (8) or 537 (2) applies in respect of the disposal (not being a relevant disposal) of an asset in an accounting period of a company by an accountable person, then, notwithstanding any provision of the Corporation Tax Acts—

(a) any referable corporation tax in respect of any chargeable gains which accrue on the disposal shall be assessable on and recoverable from the accountable person,

(b) the referable corporation tax shall be treated as a necessary disbursement out of the proceeds of the disposal and shall be paid by the accountable person out of those proceeds, and

(c) referable corporation tax paid by the accountable person shall discharge a corresponding amount of the liability to corporation tax, for the accounting period in which the disposal is made, of the company (in this section referred to as “the company”) which apart from this subsection is the chargeable person in relation to the disposal.

(7) Notwithstanding any provision of the Capital Gains Tax Acts or of the Corporation Tax Acts, the amount of referable capital gains tax or referable corporation tax, as the case may be, which under this section is assessable on an accountable person in relation to a disposal, shall be recoverable by an assessment on the accountable person to income tax under Case IV of Schedule D for the year of assessment in which the disposal occurred on an amount the income tax on which at the standard rate for that year of assessment is equal to the amount of the referable capital gains tax or referable corporation tax, as the case may be.

(8) Where tax is paid by an accountable person under this section and it is established that the amount of tax paid is excessive, appropriate relief by means of repayment or otherwise shall be given to the accountable person.

(9) Subject to subsections (5)(c) and (6)(c), nothing in this section shall affect the amount of chargeable gains on which—

(a) the debtor is chargeable to capital gains tax, or

(b) the company is chargeable to corporation tax.