
STATUTORY INSTRUMENTS

1994 No. 2809

The Ports (Northern Ireland) Order 1994

Levy on disposals of land, etc.

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19.—(1) Where property, rights, liabilities and functions of a relevant port authority are transferred under Article 4 to a company (“the chargeable company”), a levy under this Article shall be chargeable in respect of any gain accruing to the company on a chargeable disposal of—

- (a) relevant land; or
- (b) a relevant estate in land;

made within the period of ten years beginning with the date on which the company ceases to be a wholly-owned subsidiary of the body which immediately before the transfer was the relevant port authority in question (“the levy period”).

(2) For the purposes of paragraph (1)—

- (a) land is relevant land if—
 - (i) it is transferred by the transfer; or
 - (ii) it belongs both immediately before and immediately after the transfer to a transferred 51 per cent. subsidiary; and
- (b) an estate in land is a relevant estate if—
 - (i) it is transferred by the transfer;
 - (ii) it belongs both immediately before and immediately after the transfer to a transferred 51 per cent. subsidiary; or
 - (iii) it is an estate of any specified description in land which is relevant land or in land in which a relevant estate within head (i) or (ii) subsists at the time of the transfer.

(3) The levy shall be charged—

- (a) at the rate of 25 per cent. on the amount of the gain, in the case of a disposal made within the first five years of the levy period;
- (b) at the rate of 20 per cent. on the amount of the gain, in the case of a disposal made within the sixth or seventh year of that period; and
- (c) at the rate of ten per cent. on the amount of the gain, in the case of a disposal made during the remainder of that period.

(4) The levy shall be paid by the chargeable company to the Department.

(5) There is a disposal of land or an estate in land for the purposes of this Article and Article 20 if there would be such a disposal for the purposes of the 1992 Act.

(6) In addition, there is such a disposal for the purposes of this Article in any case where—

- (a) there would be such a disposal for the purposes of the 1992 Act by virtue of section 178(3) or (5) or 179(3) or (6) of that Act (deemed disposal of assets by company leaving a group) if the relevant six-year limit were disregarded; and

- (b) the operative time falls within the levy period.
- (7) For the purposes of paragraph (6)—
- (a) “the relevant six-year limit” means in relation to section 178(3) or 179(3) the six-year period mentioned in section 178(1) or 179(1) and in relation to section 178(5) or 179(6) the six-year period mentioned in section 178(5)(a) or 179(6)(a); and
 - (b) “the operative time” means—
 - (i) in relation to section 178(3) or 179(3), the time when the company in question ceases for the purposes of that section to be a member of the group referred to in subsection (1) of that section; and
 - (ii) in relation to section 178(5) or 179(6), the time when the company in question ceases to satisfy the conditions specified in section 178(6) or 179(7).
- (8) The Department may by order make provision—
- (a) for determining when and by whom any disposal of land or an estate in land is to be regarded for the purposes of this Article as being made;
 - (b) specifying the descriptions of disposal which are to be chargeable disposals for the purposes of this Article;
 - (c) for determining in what circumstances a gain is to be regarded for the purposes of this Article as accruing to the chargeable company on such a disposal and the amount of any gain so accruing; and
 - (d) for the administration, assessment, collection and recovery of levy under this Article;
- and the order may contain such supplementary, incidental or consequential provisions as appear to the Department to be appropriate.
- (9) Without prejudice to the generality of paragraph (8), the provision authorised by that paragraph includes in particular provision—
- (a) for treating a disposal of land or an estate in land as being made at any specified time notwithstanding that it is not the time at which the disposal takes place, or is to be regarded as taking place, for the purposes of the 1992 Act (including that Act as it applies by virtue of paragraph (6));
 - (b) for treating a gain as accruing to the chargeable company in specified circumstances on a disposal of land or an estate in land notwithstanding that no actual benefit accrues to that company on the disposal (including in particular circumstances where the disposal is made by a person other than that company);
 - (c) for treating a disposal made in specified circumstances as having been made for consideration of any specified description;
 - (d) with respect to the principles, assumptions and methods to be applied in making any valuation of land or an estate in land for the purpose of determining the amount of any gain accruing on a disposal;
 - (e) with respect to the payment of interest at such rate as may be specified, or as may be determined by or under the order, in respect of any amount of levy not paid within the period during which it is payable in accordance with the order;
 - (f) imposing penalties (including continuing penalties) in respect of contraventions of provisions of any order under this Article; and
 - (g) applying for any purposes of the order any statutory provisions relating to corporation tax on chargeable gains with such modifications as may be specified.

(10) The provision referred to in paragraph (9)(a) includes provision for treating a disposal as being made at a time falling within the levy period notwithstanding that for the purposes there mentioned it takes place, or is to be regarded as taking place, before the beginning of that period.

(11) In this Article—

- (a) “specified” means specified in an order under this Article; and
- (b) “transferred 51 per cent. subsidiary” means, in relation to a transfer under Article 4, a company which—
 - (i) immediately before the transfer is an effective 51 per cent. subsidiary of the relevant port authority in question; and
 - (ii) by virtue of the transfer becomes such a subsidiary of the chargeable company.

(12) In paragraph (11)(b) “effective 51 per cent. subsidiary” has the meaning that it would have for the purposes of sections 170 to 181 of the 1992 Act by virtue of subsections (7) and (8) of section 170 if the word “or” were substituted for the word “and” at the end of paragraph (a) of subsection (7) (by virtue of which, for a company to be an effective 51 per cent. subsidiary of another company, that other company must meet conditions both as to entitlement to profits and as to entitlement to assets on a winding up).

Supplementary and consequential provisions relating to levy under Article 19

20.—(1) The Department may, with the consent of the Department of Finance and Personnel, by order substitute for any percentage specified in Article 19(3) such other percentage as may be specified in the order.

(2) Subject to paragraphs (3) and (4), any amount payable or paid by any company in respect of levy under that Article on any disposal shall be allowable as a deduction from the consideration in the computation under the 1992 Act of the gain accruing to that company or to any other person on the disposal.

References below in this Article, in relation to any disposal on which levy under that Article is chargeable, to the levy amount are references to any amount so payable or paid in respect of the levy.

(3) Paragraph (2) shall not apply where—

- (a) apart from the deduction of the levy amount an allowable loss would accrue to the company or to any other person on the disposal; or
- (b) such a loss would so accrue if the levy amount were deducted;

but in the latter case the person making the disposal shall be treated for the purposes of corporation tax on chargeable gains as if the disposal had been made for a consideration of such amount as would secure that neither a gain nor a loss would accrue to that person.

(4) Paragraph (2) shall not apply where a disposal on which levy under Article 19 is chargeable is one which, by virtue of section 139(1) or 171(1) of the 1992 Act (company reconstructions and amalgamations and transfers within groups of companies), is treated as made for a consideration (“the original consideration”) giving rise to neither a gain nor a loss.

(5) Where in any case within paragraph (4) the original consideration is less than the market value at the time of the disposal of the land or estate in land which is the subject of the disposal, the consideration for which the disposal is treated by the provision in question as being made shall be increased by—

- (a) the levy amount; or
- (b) the excess of that market value over the original consideration,

whichever is the less.

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(6) Except as provided in paragraphs (2) to (5), no amount payable or paid in respect of levy under Article 19 or interest on such levy shall be allowed as a deduction or otherwise taken into account in computing any income, profits or losses for any tax purposes.

(7) In this Article “allowable loss” has the same meaning as in the 1992 Act.