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STATUTORY INSTRUMENTS

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**1992 No. 58**

**The Ports Act 1991 (Levy on  
Disposals of Land, etc.) Order 1992**

GENERAL

**Relevant interest in land — Specified description**

3. For the purposes of subsection (1) of section 17 of the 1991 Act and this Order, an interest in land is a relevant interest if, not being such an interest by virtue of sub-paragraph (i) or (ii) of paragraph (b) of subsection (2) of that section, it is an interest of any kind in land which is relevant land or in land in which a relevant interest within either of those sub-paragraphs subsists at the time of the transfer referred to in those subsections.

**Time of disposal**

4. Subject to the provisions of this Order, the time at which a disposal of relevant land or a relevant interest in land is to be regarded for the purposes of section 17 of the 1991 Act and this Order as being made is the time at which it is made, or is to be regarded as being made, for the purposes of the 1979 Act.

**Person making disposal**

5. Subject to the provisions of this Order, a disposal is to be regarded as being made by a person if it would be regarded as being made by that person for the purposes of the statutory provisions relating to corporation tax on chargeable gains.

**Chargeable disposals**

6. Subject to the provisions of this Order, every description of disposal of relevant land or a relevant interest in land made by a member of a chargeable company's group is to be a chargeable disposal for the purposes of section 17 of the 1991 Act and this Order.

**Accrual of gains**

7. Where, for the purposes of section 17 of the 1991 Act and this Order, on a disposal of relevant land or a relevant interest in land gain accrues or is regarded as accruing to a member of a chargeable company's group, the gain shall for those purposes be regarded as accruing to the chargeable company, even if the disposal is not made by that company or no actual benefit accrues to that company on the disposal.

**Computation of gains**

8.—(1) Subject to the provisions of this Order, the amount of the gain which accrues, or is to be regarded for the purposes of section 17 of the 1991 Act and this Order as accruing, to a member of a chargeable company's group on a disposal of relevant land or a relevant interest in land shall be the amount of the gain accruing or regarded as accruing on the disposal computed

in accordance with the statutory provisions relating to the computation of corporation tax on chargeable gains and taking account of any claim or election which is made for the purposes of the 1979 Act.

(2) At any time when the consideration for a disposal of relevant land or a relevant interest in land made or to be regarded for the purposes of section 17 of the 1991 Act or this Order as being made by a member of a chargeable company's group, together with the consideration for any associated disposal or the aggregate consideration for two or more associated disposals made within the levy period, does not exceed the minimum limit the disposal shall, subject to paragraph (3) below, be deemed for those purposes to be one on which no gain accrued.

(3) If—

- (a) by virtue of paragraph (2) above, a disposal has at some time been regarded as one on which no gain accrued; and
- (b) the consideration for that disposal, together with the consideration for any associated disposal, or the aggregate consideration for two or more associated disposals made within the levy period, subsequently exceeds the minimum limit;

then, subject to paragraph (4) below, the disposal shall not be regarded as one on which by virtue of paragraph (2) above no gain accrued; and any gain on the disposal shall be computed in accordance with paragraph (1) above.

(4) At any time when the aggregate consideration for all disposals (including small disposals; but excluding disregarded disposals and, for as long as a disposal is disregarded by virtue of article 25(1), a disposal which is so disregarded) of relevant land and relevant interests in land made or to be regarded for the purposes of section 17 of the 1991 Act or this Order as being made by members of a chargeable company's group within the levy period, does not exceed the materiality threshold, those disposals shall, subject to paragraph (5) below, be deemed for those purposes to be disposals on which no gain accrued.

(5) If—

- (a) a disposal has at some time been regarded by virtue of paragraph (4) above to be one on which no gain accrued; and
- (b) the aggregate consideration referred to in that paragraph subsequently exceeds the materiality threshold,

the disposal shall not be regarded as one on which by virtue of paragraph (4) above no gain accrued; and any gain on the disposal shall be computed in accordance with paragraph (1) above: Provided that a small disposal shall not by reason of anything in this paragraph be regarded as a disposal on which a gain accrued unless it is to be so regarded by virtue of paragraph (3) above.

(6) At any time when the consideration for a disposal of relevant land or a relevant interest in land made or to be regarded for the purposes of section 17 of the 1991 Act or this Order as being made by a member of a chargeable company's group, together with the consideration for any associated disposal or the aggregate consideration for two or more associated disposals made within the same disposal period as the first-mentioned disposal, does not exceed the disregarded limit, the first-mentioned disposal shall, subject to paragraph (7) below, be deemed for those purposes to be one on which no gain accrued, and it shall be disregarded for all other purposes of this Order:

Provided that, where in any one disposal period a member of the chargeable company's group or two or more members of the group together have already made twenty disposals each of which does not exceed the disregarded limit, this paragraph shall not apply to any further such disposal within that disposal period.

(7) If—

- (a) by virtue of paragraph (6) above, a disposal has at some time been regarded as one on which no gain accrued; and
- (b) the consideration for that disposal, together with the consideration for any associated disposal, or the aggregate consideration for two or more associated disposals made within the same disposal period as the first-mentioned disposal, subsequently exceeds the disregarded limit,

the disposal shall no longer be disregarded for the purposes mentioned in the said paragraph (6).

(8) Nothing in paragraph (2), (4) or (6) above shall affect the date on which any disposal to which it refers is to be regarded for the purposes of section 17 of the 1991 Act and this Order as being made.

(9) For the purposes of this article and this Order—

- (a) the consideration for a disposal is the consideration which is, or but for paragraph (2), (4) or (6) above would be, taken into account in computing under paragraph (1) above the amount of any gain accruing on that disposal;
- (b) “associated disposal” has the meaning given to it by Schedule 1 to this Order;
- (c) the “minimum limit”, in relation to a disposal made or to be regarded for the purposes of section 17 of the 1991 Act or this Order as being made by a member of a chargeable company’s group, means whichever is the lesser of—
  - (i) £200,000; and
  - (ii) two per cent of the consideration given for all securities and rights in respect of the chargeable company disposed of by the relevant port authority in pursuance of section 4 of the 1991 Act;

in each case as increased by the percentage of any increase in the retail prices index between that for the month in which this Order is made and that for the month immediately preceding the month in which the disposal is made or is to be regarded for those purposes as being made;

- (d) “the materiality threshold”, in relation to a chargeable company, means whichever is the lesser of—
  - (i) £500,000; and
  - (ii) ten per cent of the consideration given for all securities and rights in respect of the chargeable company disposed of by the relevant port authority in pursuance of section 4 of the 1991 Act;

in each case as increased by the percentage of any increase in the retail prices index between that for the month in which this Order is made and that for the month immediately preceding the month in which the calculation falls to be made; and

- (e) the “disregarded limit”, in relation to a disposal made, or regarded for the purposes of section 17 of the 1991 Act or this Order as being made, by a member of a chargeable company’s group means £4,000 as increased by the percentage of any increase in the retail prices index between that for the month in which this Order is made and that for the month immediately preceding the month in which the disposal is made or regarded for those purposes as being made.

### **Miscellaneous modifications of tax provisions as applied**

9. Schedule 2 to this Order (which provides for miscellaneous exclusions from and modifications of the statutory provisions relating to corporation tax on chargeable gains as they apply for the purposes of section 17 of the 1991 Act and this Order) shall have effect.

### **Market Values — Disputes**

**10.** Where the market value of any land or any interest in land is required to be determined for the purpose of computing the amount of any gain accruing on a disposal made, or to be regarded for the purposes of section 17 of the 1991 Act or this Order as being made, by a chargeable company or another member of the chargeable company's group, article 38 shall apply for the purpose of resolving any dispute between the chargeable company and the appropriate Minister regarding that value.

### **Appropriation to trading stock**

**11.**—(1) If relevant land or a relevant interest in land is within the levy period appropriated by a member of a chargeable company's group as trading stock in such circumstances that subsection (1) of section 122 of the 1979 Act applies to the appropriation, the disposal constituted by the appropriation by virtue of that subsection shall for the purposes of section 17 of the 1991 Act and this Order be regarded as taking place at such time as the land or interest ceases to be beneficially owned—

- (a) if that member was not a member of the chargeable company's wholly-owned group, by that member; or
- (b) if that member was a member of the chargeable company's wholly-owned group, by any member of the wholly-owned group;

and that time shall accordingly be the disposal date in relation to that disposal.

(2) The gain (if any) accruing on a disposal within paragraph (1) above shall—

- (a) in a case falling within sub-paragraph (a) of that paragraph or in a case which falls within sub-paragraph (b) of that paragraph by reason of the member's disposing of the land or interest, be equal to the gain which, if the land or interest had not been so appropriated, would have accrued or been regarded as accruing on the disposal as a result of which the land or interest ceased to be so beneficially owned; or
- (b) in any other case falling within sub-paragraph (b) of that paragraph, be computed as if the land or interest had been disposed of at that time at its then market value.

(3) Section 274(2) of the 1970 Act and section 122(3) of the 1979 Act shall not apply for the purposes of section 17 of the 1991 Act and this Order.

### **Claims and elections — Special cases**

**12.** Where in relation to a disposal a claim or election which might otherwise have been made for the purposes of the 1979 Act cannot for some reason be made for those purposes but the provision of that Act providing for such a claim or election has not for the purposes of section 17 of the 1991 Act and this Order been disapplied by this Order, the chargeable company may make the claim or election for the purposes of the said section 17 and this Order if any gain which accrued on the disposal would thereby be eliminated or the amount of the gain would thereby be reduced or if it would result in the disposal being treated as not being a disposal.