STATUTORY RULES OF NORTHERN IRELAND

1997 No. 12

HARBOURS, DOCKS, ETC.,

The Ports (Levy on Disposals of Land, etc.) Order (Northern Ireland) 1997

Made - - - - 17th January 1997
To be laid before Parliament under paragraph 3(3) of Schedule 1 to the Northern Ireland Act 1974

Coming into operation 1st March 1997

The Department of the Environment and the Department of Agriculture in exercise of the powers conferred on them by Article 19 of the Ports (Northern Ireland) Order 1994(**1**) and of every other power enabling them in that behalf, hereby make the following Order:—

Title and commencement

1. This Order may be cited as the Ports (Levy on Disposals of Land, etc.) Order (Northern Ireland) 1997 and shall come into operation on 1st March 1997.

Interpretation

2.—(1) In this Order—

"the 1988 Act" means the Income and Corporation Taxes Act 1988(**2**);

"the 1992 Act" means the Taxation of Chargeable Gains Act 1992(**3**);

"the 1994 Order" means the Ports (Northern Ireland) Order 1994;

"annual reporting date", in relation to a disposal period, means—

(a) the day falling 180 days after the last day of that period; or

(b) if the last disposal period ends with a date other than the last day of a financial year, then, in relation to that disposal period, the day falling 180 days after the last day of the financial year in which that disposal period ends;

or, if that day is not a business day, the next succeeding business day;

(**1**) S.I.1994/2809 (N.I. 16); *see* Article 2(2) for the definition of "the Department". The Department of Agriculture is the Department where the harbour (in relation to which a relevant port authority is or immediately before a transfer under Article 4 thereof was the harbour authority) is a fishery harbour

(**2**) 1988 c. 1

(**3**) 1992 c. 12

"base rate" shall be construed in accordance with Article 15;

"business day" means any day other than a non-business day within the meaning of section 92 of the Bills of Exchange Act 1882(**4**);

"chargeable disposal" has the meaning given to it by Article 6;

"company" means any body corporate or unincorporated association but does not include a partnership or a district council;

"disposal date", in relation to a disposal, means, subject to the provisions of this Order, the date on which the disposal is made for the purposes of the 1992 Act;

"disposal period", in relation to a chargeable company, means—

(a) the first disposal period shall begin with the first day of the levy period and end with the final day of the financial year in which that day falls;

(b) the last disposal period shall end with the last day of the levy period, whether or not that day is the end of a financial year; and

(c) in any other case, a financial year;

"disposal statement" means a statement required to be furnished under Article 36;

"disregarded disposal" means a disposal on which, by virtue of Article 8(6), no gain is regarded as having accrued;

"financial year", in relation to a chargeable company, means the financial year of that company within the meaning given by Article 231 of the Companies (Northern Ireland) Order 1986(**5**);

"group", in relation to a chargeable company, means (except in the expression "wholly-owned group") the group formed by—

(a) that chargeable company;

(b) any company or other person of which that chargeable company is an effective subsidiary;

(c) any company which is an effective subsidiary of that chargeable company; and

(d) any company which is an effective subsidiary of any company or other person of which the chargeable company is an effective subsidiary;

and for this purpose a company ("A") is an effective subsidiary of another company or other person ("B") if—

(i) A would be an "effective 51 per cent subsidiary" within the meaning that it would have for the purposes of sections 170 to 181 of the 1992 Act by virtue of section 170(7) and (8) if the word "or" were substituted for the word "and" at the end of section 170(7)(*a*); or

(ii) B, or B together with any person connected with B, has control of A (and for this purpose any question whether a person is connected with another shall be determined in accordance with the provisions of section 839 of the 1988 Act, but as if the exception in subsection (4) of that section were omitted; and "control" has the meaning given by section 840 of that Act);

"lease" has the same meaning as it has for the purposes of paragraph 10(1)(*a*) of Schedule 8 to the 1992 Act;

"market value", subject to Article 18, has the meaning given by section 272 of the 1992 Act;

"quarter date" shall be construed in accordance with Article 13(2) to (5);

"referee" means a person appointed under Article 38;

(**4**) 1882 c. 61; section 92 was amended by sections 3(1) and (3) and 4(4) of the Banking and Financial Dealings Act 1971 (c. 80)
(**5**) S.I. 1986/1032 (N.I. 6); Art. 231 was inserted by Art. 5 of the Companies (Northern Ireland) Order 1990 S.I. 1990/593 (N.I. 5)

"retail prices index" means the general index of retail prices (for all items) published by the Central Statistical Office of the Chancellor of the Exchequer, and, if that index is not published for any month, any substituted index or index figures published by that Office for that month;

"section 178 or 179 disposal" means a disposal which is treated as taking place by virtue of section 178(3) or (5) or 179(3) or (6) of the 1992 Act or Article 19(6) of the 1994 Order;

"small disposal" means a disposal on which, by virtue of Article 8(2), no gain is regarded as having accrued;

"wholly-owned group", in relation to a chargeable company, means the group formed by—

(a) the chargeable company; and

(b) every company which would be a member of the same group as the chargeable company for the purposes of section 170 of the 1992 Act if—

(i) subsections (4) to (6) of that section were omitted (and subsections (2)(*b*), (3) and (8) were construed accordingly); and

(ii) the references to "75 per cent", "51 per cent" and "more than 50 per cent" in that section and in section 838(1)(*b*) of, and Schedule 18 to, the 1988 Act were each references to 100 per cent.

(2) In this Order a reference to the 1992 Act or to any provision of that Act or to any other statutory provision relating to corporation tax on chargeable gains is, except in so far as it applies in determining whether there is a disposal of land or an estate in land for the purposes of Article 19 of the 1994 Order, a reference to that Act or that provision as it applies immediately before the coming into operation of this Order; and references to the purposes of the 1992 Act or of the statutory provisions relating to corporation tax on chargeable gains include references to the purposes of the 1992 Act as it applies by virtue of Article 19(6) of the 1994 Order.

(3) In this Order, "the purposes of Article 19 of the 1994 Order" shall include all or any of the purposes of this Order.

Relevant estate in land — specified description

3. For the purposes of Article 19 of the 1994 Order, an estate in land is a relevant estate if, not being such an estate by virtue of paragraph (2)(*b*)(i) or (ii) of that Article, it is an estate of any kind in land which is relevant land or in land in which a relevant estate within either of those heads subsists at the time of the transfer referred to in that sub-paragraph.

Time of disposal

4. Subject to the provisions of this Order, the time at which a disposal of relevant land or a relevant estate in land is to be regarded for the purposes of Article 19 of the 1994 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 1992 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 estate in land made by a member of a chargeable company's group is to be a chargeable disposal for the purposes of Article 19 of the 1994 Order.

Accrual of gains

7. Where, for the purposes of Article 19 of the 1994 Order, on a disposal of relevant land or a relevant estate in land a 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 Article 19 of the 1994 Order as accruing, to a member of a chargeable company's group on a disposal of relevant land or a relevant estate 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 1992 Act.

(2) At any time when the consideration for a disposal of relevant land or a relevant estate in land made or to be regarded for the purposes of Article 19 of the 1994 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), be deemed for those purposes to be one on which no gain accrued.

(3) If—

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

(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 estates in land made or to be regarded for the purposes of Article 19 of the 1994 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), be deemed for those purposes to be disposals on which no gain accrued.

(5) Subject to paragraph (6), if—

(a) a disposal has at some time been regarded by virtue of paragraph (4) 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) no gain accrued; and any gain on the disposal shall be computed in accordance with paragraph (1).

(6) A small disposal shall not by reason of anything in paragraph (5) be regarded as a disposal on which a gain accrued unless it is to be so regarded by virtue of paragraph (3).

(7) Subject to paragraph (8), at any time when the consideration for a disposal of relevant land or a relevant estate in land made or to be regarded for the purposes of Article 19 of the 1994 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 be deemed to be one on which no gain accrued, and it shall, subject to paragraph (9), be disregarded for all other purposes of this Order.

(8) 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, paragraph (7) shall not apply to any further such disposal within that disposal period.

(9) If—

(a) by virtue of paragraph (7), 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 paragraph (7).

(10) Nothing in paragraph (2), (4) or (7) shall affect the date on which any disposal to which it refers is to be regarded for the purposes of Article 19 of the 1994 Order as being made.

(11) For the purposes of this Order—

(a) the consideration for a disposal is the consideration which is, or but for paragraph (2), (4) or (7) would be, taken into account in computing under paragraph (1) the amount of any gain accruing on that disposal;

(b) "associated disposal" has the meaning given to it by Schedule 1;

(c) "minimum limit", in relation to a disposal made or to be regarded for the purposes of Article 19 of the 1994 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 Article 6 of the 1994 Order;

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) "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 Article 6 of the 1994 Order;

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) "disregarded limit", in relation to a disposal made, or regarded for the purposes of Article 19 of the 1994 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