

## **Liquidators, trustees in bankruptcy, personal insolvency, etc. (SS.569-571)**

### **Part 19-03-08**

Document last reviewed May 2017



## **Liquidators, trustees in bankruptcy, personal insolvency, etc. (SS.569 - 571)**

- 8.1** The appointment of a liquidator in the case of a voluntary or compulsory liquidation of a company should not be treated as a disposal of assets by the company. The liquidator should be treated for all the purposes of Capital Gains Tax as a trustee against whom the company is absolutely entitled to the assets within the terms of **Section 567(2)** (see [Tax Instruction 19.3.3 Par. 1](#)), i.e., as a bare trustee.
- 8.2** A receiver or manager appointed to control the affairs of a company should be treated in the same manner as a liquidator of a company, notwithstanding that he may be a receiver for creditors or debenture holders.
- 8.3** The broad effect of **Section 569** is that where, in cases of insolvency, assets vest in a trustee, the transfer of assets from the insolvent to the trustees or vice versa is disregarded for Capital Gains Tax purposes. This also applies in relation to transfers of assets by debtors to trustees under the terms of a Debt Settlement Arrangement or a Personal Insolvency Arrangement to which the Personal Insolvency act 2012 applies. [See Paragraph 5 of Explanatory Note – Personal Insolvency act 2012 and Section 100 Finance Act 2012](#) for further information.

**Section 569(2)** provides that a trustee or assignee in bankruptcy or under a deed or arrangement is to be treated as though he were a nominee (see [Tax Instruction 19.3.3 Par. 1](#)) of the bankrupt or debtor, thus disregarding for Capital Gains Tax purposes the vesting of assets in the trustee or assignee or the re-transfer of assets to the debtor.

- 8.4** Where the bankrupt or debtor dies while any of his assets are vested in a trustee, etc., **Section 569(2)** ceases to apply after his death and, for the purposes of **Section 573(2)** ([Tax Instruction 19.3.9 Par. 1](#)), the assets should be deemed to be acquired by the trustee, etc., as if he were a personal representative (**Section 569(3)**). Similarly, where the assets of a deceased person are vested in a trustee in bankruptcy after the death (e.g., following a successful petition of creditors), the trustee should be treated as if he were the personal representative of the deceased (**Section 569(4)**) as if the property devolved on him at the death.
- 8.5** Where, on the liquidation of a company, assets are distributed in kind (i.e., in the form of real property, shares and securities, chattels, etc., but excluding cash) to shareholders, there is for Capital Gains Tax purposes -
- (a) a disposal by the liquidator of those assets for a consideration which is deemed to be equal to their respective market values;
  - (b) an acquisition of those assets by the shareholders at the same market value;

- (c) a disposal by each shareholder of his shares in the company for a consideration which includes the market value of the assets received in kind.

- 8.6** Where exceptionally the liquidator of a company, which is being wound up voluntarily, is authorised to make compensation payments for loss of office to former servants of the company, e.g. a director, secretary or senior executive, a proportionate amount of the compensation payments should, in computing a shareholder's gain or loss on his shares in such a company, be added to the actual distribution which he receives from the liquidator.

If the compensation payment is made against a legally enforceable claim for damages for wrongful dismissal, see [Tax Instruction 19.7.10 Par. 3](#).

As to lump sum payments falling within **Sections 123** and **201**, see [Tax Instruction 19.2.4](#).

- 8.7** Distributions (including arrears of preference dividends) in the course of dissolving or winding up a company are regarded as capital distributions under **Section 583(1)** (see [Tax Instruction 19.4.5 Par. 1](#)).

There is often more than one distribution during the course of dissolving or winding up a company. In such a case, where the shares of the company are unquoted at the date of the first or later distribution, an inspector should accept any valuation from a taxpayer or his agent of the residual value of the shares at the date of the particular distribution, provided that -

- (a) the valuation appears reasonable and
- (b) the liquidation is expected to be completed within two years of the first distribution (and does not in fact extend much beyond that period).

The valuation need not include a discount for deferment and if the distributions are complete before the Capital Gains Tax assessment is made, it should be accepted that the residual value of the shares in relation to a particular distribution is equal to the actual amount of the subsequent distributions. Normally, the question of Capital Gains Tax on an interim distribution should not be raised until after two years from the commencement of the liquidation unless the distribution, together with any previous distributions, exceeds the total cost of the shares

- 8.8** **Section 571** imposes liability on "accountable persons", viz. receivers (whether appointed under a fixed or a floating charge), liquidators, mortgagees or any person entitled to an asset by way of security. The liability imposed on them is to pay the capital gains tax (or, as the case may be,

corporation tax on chargeable gains) on any chargeable gains accruing on disposals made by them.

The section makes an accountable person assessable to whatever tax is "referable" to the chargeable gain accruing on the disposal of an asset by him and provides that the tax is recoverable from him and shall be paid by him out of the proceeds of the disposal. The referable tax is payable in advance of, and without regard to, any sums due to "preferential" creditors. The tax (whether capital gains tax or corporation tax) is recoverable from the accountable person by an assessment on him to income tax under Case IV of Schedule D for the year of assessment in which the disposal occurred. [See **Par. 10** re allocation of serial numbers to accountable persons and **Par. 13** re the making of assessments.]

- 8.9** The section contains detailed provisions regarding the computation of the referable tax which is payable by an accountable person. Account has to be taken of any other disposals, including those by the "debtor" or "company" (whose asset has been disposed of by the accountable person), in the relevant year of assessment or account period. The benefits of allowances and reliefs (for example, allowable losses and the individual's personal exemption, and corporation tax reliefs, where appropriate) have to be allocated and apportioned as between the accountable person's chargeable gains and other chargeable gains. The amounts of the chargeable gains, their appropriate rates of tax and the existing provisions regarding priority of set-off - **Sections 546(6)** and **601(3)** - must be taken into account in apportioning and allocating the benefits of the allowances and reliefs.

It should be noted that if the asset disposed of by the accountable person was a "new asset" for the purposes of roll-over relief under **Section 597(4)** referable tax may include tax which was deferred on an earlier disposal of an "old asset" by the debtor or company.

- 8.10** To avoid confusion, the serial number of a debtor or company should not be used as regards an accountable person's liabilities under Case IV of Schedule D. A separate serial number should be allocated to any case of a debtor or company where an accountable person is assessable in respect of referable tax. The use of that serial number should be confined to tax on chargeable gains accruing to that accountable person in that case and chargeable on him under **Section 571**. The files of the debtor or company and the accountable person should be suitably cross-referenced as regards the serial numbers.

The liability of the accountable person should be dealt with in the Revenue Office which would normally deal with the liability of the debtor or company rather than the office which normally deals with the accountable person (and which would have little or no information relevant to the computation of liability).

**8.11** An accountable person should be regarded as a "chargeable person" for the purposes of **Section 980**, and may therefore apply for a certificate under that section. The application should be submitted to the Revenue Office dealing with the liability of the debtor or company. A certificate may be issued to the accountable person if he satisfies the conditions of **Section 980(8)** but if a computation of liability arising under **Section 571** has not been submitted already the certificate should be accompanied by a letter requesting the submission of the computation.

**8.12** In order to ensure that all referable tax is collected promptly, the following action should be taken in any case where an inspector becomes aware that a liquidator or receiver (including a "receiver and manager") is appointed or a mortgagee becomes entitled to an asset by way of security:-

(i) Unless the case is entered in the **Section 980** register (see **Par.11** above) relevant details of the case should be recorded to ensure that the case is identifiable as being within the scope of **Section 571**.

(ii) A letter should be issued without delay to the accountable person and should include material on the following lines:-

**"re Section 571 of the Taxes Consolidation Act 1997 - Capital Gains Tax/Corporation Tax**

I am writing to you in your capacity as liquidator/receiver/mortgagee in the case of AB/XY Ltd. because of the possible relevance of the provisions of the above-mentioned Section to you.

Referable capital gains tax [referable corporation tax on chargeable gains] accruing on the disposal of an asset by an accountable person (within the meaning of the section) is assessable on and recoverable from the accountable person, 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.

If you require any assistance in the matter, particularly as regards the computation of referable tax on chargeable gains accruing on any disposals made by you, please let me know."

**8.13** (a) In addition to the name and address of the receiver etc assessed their capacity should be shown on the lines of the following format, as the case requires:-

“Receiver in the case of Patrick Smith”

"Mortgagee in the case of Sean Ó Duibhir"

"Liquidator in the case of ABC Ltd."

- (b) care should be taken that assessments raised are in respect of Income Tax only and that no charge is made in respect of PRSI or levies.