

Restriction on use of losses and capital allowances for qualifying shipping trade. FA87 s28(1), (2), (4) and (5)(a); FA88 s40(1) and (3); FA90 s42(1); FA94 s62; FA96 s54 407.—(1) In this section—

“lessee”, in relation to a ship provided for leasing, means the person to whom the ship is or is to be leased and includes the successors in title of a lessee;

“qualifying ship” means a seagoing vessel which—

(a) (i) is owned to the extent of not less than 51 per cent by a person or persons resident in the State, or

(ii) is the subject of a letting on charter without crew by a lessor not resident in the State,

(b) in the case of a vessel to which paragraph (a)(i) applies, is registered in the State under Part II of the Mercantile Marine Act, 1955 , and, in the case of a vessel to which paragraph (a)(ii) applies, is a vessel in respect of which it can be shown that the requirements of the Merchant Shipping Acts, 1894 to 1993, have been complied with as if it had been a vessel registered under that Part,

(c) is of not less than 100 tons gross tonnage, and

(d) is self-propelled,

but, notwithstanding anything in paragraph (a), (b), (c) or (d), does not include—

(i) a fishing vessel, other than a vessel normally used for the purposes of an activity mentioned in paragraph (d) of the definition of “qualifying shipping activities”,

(ii) a tug, other than a tug in respect of which a certificate has been given by the Minister for the Marine and Natural Resources certifying that in the opinion of the Minister the tug is capable of operating in seas outside the portion of the seas which are, for the purposes of the Maritime Jurisdiction Act, 1959 (as amended by the Maritime Jurisdiction (Amendment) Act, 1988 ), the territorial seas of the State,

(iii) a vessel (including a dredger) used primarily as a floating platform for working machinery or as a diving platform, and

(iv) any other vessel of a type not normally used for the purposes of qualifying shipping activities;

“qualifying shipping activities” means activities carried on by a company in the course of a trade and which consist of—

(a) the use of a qualifying ship for the purpose of carrying by sea passengers or cargo for reward,

(b) the provision on board the qualifying ship of services ancillary to that use of the qualifying ship,

(c) the granting of rights by virtue of which another person provides or will provide those services on board that qualifying ship,

(d) the subjecting of fish to a manufacturing process on board a qualifying ship,

(e) the letting on charter of a qualifying ship for use for those purposes where the operation of the ship and the crew of the ship remain under the direction and control of the company, or

(f) the use of a qualifying ship for the purposes of transporting supplies or personnel to, or providing services in respect of, a mobile or fixed rig, platform, vessel or installation of any kind at sea;

“qualifying shipping trade” means a trade, the income from which is within the charge to corporation tax, carried on in the relevant period, which consists solely of the carrying on of qualifying shipping activities or, in the case of a trade consisting partly of the carrying on of such activities and partly of the carrying on of other activities, that part of the trade consisting solely of the carrying on of qualifying shipping activities and which is treated by virtue of subsection (3) as a separate trade;

“relevant certificate” means a certificate issued with the consent of the Minister for Finance by the Minister for the Marine and Natural Resources in relation to the letting on charter of a ship certifying, on the basis of a business plan and any other information supplied by the lessee to the Minister for the Marine and Natural Resources, that that Minister is satisfied that the lease is in respect of a ship which—

(a) will result in an upgrading and enhancement of the lessee's fleet leading to improved efficiency and the maintenance of competitiveness,

(b) (i) has the potential to create a reasonable level of additional sustainable employment and other socio-economic benefits in the State, or

(ii) will assist in maintaining or promoting the lessee's trade in the carrying on of a qualifying shipping activity and the maintenance of a reasonable level of sustainable employment and other socio-economic benefits in the State,

and

(c) will result in the leasing of a ship which complies with current environmental and safety standards;

“the relevant period” means the period from the 1st day of January, 1987, to the 31st day of December, 2000;

“specified capital allowances” means capital allowances in respect of—

(a) expenditure incurred by any person in the relevant period on the provision of a qualifying ship which is in use in or is intended to be used in a qualifying shipping trade, or

(b) the diminished value by reason of wear and tear during the relevant period of a qualifying ship in

use for the purposes of a qualifying shipping trade,

notwithstanding that any such capital allowances are not treated as trading expenses of the qualifying shipping trade.

(2) Before issuing a relevant certificate, the Minister for the Marine and Natural Resources shall be satisfied that the lease concerned is for bona fide commercial purposes and not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

(3) (a) Subject to paragraph (b), where during the relevant period a company carries on qualifying shipping activities as part of a trade, those activities shall be treated for the purposes of the Tax Acts, other than any provision of those Acts relating to the commencement or cessation of a trade, as a separate trade distinct from all other activities carried on by the company as part of the trade, and any necessary apportionment shall be made of receipts or expenses.

(b) This subsection shall not apply in relation to a claim by the company for the set-off under section 396 (1)—

(i) against income arising during the relevant period, of a loss incurred before the commencement of the relevant period, and

(ii) against income arising after the end of the relevant period, of a loss incurred during the relevant period.

(4) Notwithstanding any other provision of the Tax Acts apart from subsection (5), for the purposes of granting relief from tax in respect of any income or profits arising in the relevant period or for the purposes of determining the amount of such income or profits which is chargeable to tax—

(a) specified capital allowances shall be allowed only—

(i) in computing the income from a qualifying shipping trade, or

(ii) in computing or charging to tax any income arising from the letting on charter of the qualifying ship to which the specified capital allowances refer, other than letting on charter which is a qualifying shipping activity,

and shall not be allowed in computing any other income or profits or in taxing any other trade or in charging any other income to tax,

(b) a loss incurred in the relevant period in a qualifying shipping trade shall not be set off—

(i) against any profits under section 396 (2), except to the extent of the amount of income from a qualifying shipping trade included in those profits, or

(ii) against the total profits of a claimant company under section 420 (1), except to the extent of the

amount of income from a qualifying shipping trade included in those total profits,

and

(c) the letting on charter of a ship referred to in paragraph (a)(ii) in the course of a trade shall be deemed, notwithstanding subsection (1)(c) of section 403, to be a trade of leasing for the purposes of that section and to be a separate trade as provided for in subsection (2) of that section.

(5) As respects a ship a binding contract in writing for the acquisition or construction of which was concluded on or after the 1st day of July, 1996, subsection (4)(c) shall not apply in the case of a letting on charter of a ship referred to in that subsection where the lease in respect of the ship is a lease the terms of which comply with clauses (I) and (II) of section 404 (1)(b)(i), and where the lessee produces to the Revenue Commissioners a relevant certificate.

(6) A qualifying shipping trade shall not be regarded as a specified trade for the purposes of section 403.