

Relief for individuals on certain reinvestment. FA93 s27(1) to (5) (apart from proviso to (5)) and (6) to (13); FA94 s65(b); FA95 s74(1); FA96 s62(1); FA97 s75(1) 591.—(1) In this section—

“director” has the same meaning as in section 116;

“eligible shares” and “ordinary shares” have the same meanings respectively as in section 488;

“full-time director”, “full-time employee”, “part-time director” and “part-time employee” have the same meanings respectively as in section 250;

“holding company” means a company whose business consists wholly or mainly in the holding of shares in, or securities of, one or more companies which are trading companies and which are its 51 per cent subsidiaries;

“material disposal” has the meaning assigned to it by subsection (5);

“ordinary share capital” has the same meaning as in section 2;

“the original holding” has the meaning assigned to it by subsection (2);

“qualifying company” has the meaning assigned to it by subsection (7);

“qualifying investment” has the meaning assigned to it by subsection (6);

“the reinvestor” has the meaning assigned to it by subsection (2);

“the specified period” has the meaning assigned to it by subsection (6)(b);

“trade” includes a profession, and “trading company”, “trading group”, “qualifying trade” (within the meaning of subsection (8)) and “qualifying trading operations” (within the meaning of that subsection) shall be construed accordingly;

“trading company” means a company whose business consists wholly or mainly of the carrying on of a trade or trades;

“trading group” means a holding company and one or more trading companies which are 51 per cent subsidiaries of the holding company;

“unquoted company” means a company none of whose shares, stocks or debentures are listed in the official list of a stock exchange or quoted on an unlisted securities market of a stock exchange;

“51 per cent subsidiary” has the meaning assigned to it by section 9.

(2) (a) Subject to this section, where the consideration which an individual (in this section referred to as “the reinvestor”) obtains for any material disposal by him or her of shares in or securities of any company (in this section referred to as “the original holding”) is applied by him or her within the period of 3 years from the date of that disposal in acquiring a qualifying investment, the reinvestor shall, on making a claim in that behalf, be treated for the purposes of the Capital Gains Tax Acts as if the chargeable gain accruing on the disposal of the original holding did not accrue until he or she disposes of the qualifying investment.

(b) Notwithstanding paragraph (a), where—

(i) the disposal of the qualifying investment is a material disposal for the purposes of this section, and

(ii) the consideration for that disposal is applied by the reinvestor within the period of 3 years from the date of that disposal in acquiring another qualifying investment,

the reinvestor shall be treated as if the chargeable gain accruing on the disposal of the original holding did not accrue until he or she disposes of the other qualifying investment and any further qualifying investment which is acquired in a similar manner.

(3) (a) Where an individual is not entitled to be treated in accordance with subsection (2) solely by reason of not having satisfied the requirements of either or both paragraphs (a) and (e) of subsection (6), and—

(i) all the other requirements of this section have been satisfied,

(ii) the capital gains tax on the disposal of the original holding has been paid in full, and

(iii) the individual has, throughout a period of 2 years beginning within the specified period, been a full-time employee or a full-time director of the qualifying company,

then, the individual—

(I) shall be entitled on making a claim in that behalf to such repayment of capital gains tax as would secure that the tax which is ultimately borne by the individual does not exceed the tax which would have been borne by the individual if he or she had been entitled to be treated in accordance with subsection (2), and

(II) shall be treated for the purposes of the Capital Gains Tax Acts as if the chargeable gain accruing on the disposal of the original holding did not accrue until the individual disposes of the qualifying investment, and subsection (2)(b) shall apply for the purposes of this subsection as it applies for the purposes of subsection (2).

(b) No repayment of tax under this subsection shall carry interest.

(4) Subsection (2) shall not apply if part only of the amount or value of the consideration for the

material disposal of the original holding is applied, within the period of 3 years from the date of that disposal, in acquiring a qualifying investment but, if all of the amount of that consideration except for a part which is less than the amount of the gain accruing on the disposal is so applied, the reinvestor shall, on making a claim in that behalf, be treated for the purposes of the Capital Gains Tax Acts as if the amount of the gain accruing on the disposal were reduced to the amount of the consideration not applied in acquiring a qualifying investment, and the balance of the gain shall be treated as if it did not accrue until the reinvestor disposes of the qualifying investment.

(5) For the purposes of this section, the disposal of shares in or securities of a company shall be a material disposal if—

(a) throughout the period of 3 years ending with the date of the disposal, or

(b) in a case where the company commenced to trade at any time in the period mentioned in paragraph (a), throughout the period beginning at that time and ending with the date of the disposal,

the following conditions are satisfied—

(i) the company has been a trading company or a holding company, and

(ii) the reinvestor has been a full-time employee, part-time employee, full-time director or part-time director of the company or, if that company is a member of a trading group, of one or more companies which are members of the trading group.

(6) For the purposes of this section, an individual shall be regarded as acquiring a qualifying investment where he or she acquires any eligible shares in a qualifying company if—

(a) he or she holds not less than 5 per cent of the ordinary share capital of the company at any time in the period (in this subsection referred to as “the initial period”) beginning on the date of the acquisition of the eligible shares and ending on the date which is one year after the date of the disposal of the original holding,

(b) he or she holds not less than 15 per cent of the ordinary share capital of the company at any time in the period (in this section referred to as “the specified period”) beginning on the date of the acquisition of the eligible shares and ending on the date which is 3 years after the date of the disposal of the original holding,

(c) within the specified period, the company uses the money raised through the issue of the eligible shares for the purposes of enabling it, or enlarging its capacity, to undertake qualifying trading operations (within the meaning of subsection (8)),

(d) the company is not—

(i) the company in which the original holding has subsisted, or

(ii) a company that was a member of the same trading group as that company,

and

(e) he or she becomes at any time within the initial period, and is throughout the period beginning at that time and—

(i) ending at the end of the specified period, or

(ii) in a case where the company is wound up or dissolved without winding up and the conditions mentioned in subsection (7)(d) are satisfied, ending at the time of the commencement of the winding up or dissolution of the company,

a full-time employee or a full-time director of the company.

(7) (a) For the purposes of this section and subject to paragraphs (b) to (d), a company shall be a qualifying company if it is incorporated in the State and if—

(i) it is throughout the specified period—

(I) an unquoted company resident in the State and not resident elsewhere, and

(II) a company which exists wholly for the purposes of carrying on wholly or mainly in the State of one or more qualifying trades,

and

(ii) it is not at any time in the specified period—

(I) under the control of another company (or of another company and any person connected with that other company), or

(II) without being under the control of another company, a 51 per cent subsidiary of that other company.

(b) A company shall be deemed not to have ceased to be a qualifying company solely by virtue of shares in the company commencing, at any time in the specified period, to be quoted on the market known as the Developing Companies Market of the Irish Stock Exchange.

(c) A company shall cease to be a qualifying company if at any time in the specified period a resolution is passed, or an order is made, for the winding up of the company, any other act is done for the like purpose) or the company is dissolved without winding up.

(d) Notwithstanding paragraph (c), a company shall be deemed not to have ceased to be a qualifying company solely by virtue of the application of that paragraph where—

(i) it is shown that the winding up or dissolution is for bona fide commercial reasons and does not form part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of income tax, corporation tax or capital gains tax, and

(ii) the company's net assets, if any, are distributed to its members within 3 years from the commencement of the dissolution or the winding up.

(8) (a) In this subsection, “qualifying trading operations”, in relation to a trade, means all the operations of the trade excluding those of dealing in shares, securities, land, currencies, futures or traded options.

(b) A trade shall be a qualifying trade for the purposes of subsection (7) if throughout the specified period the trade—

(i) is conducted on a commercial basis and with a view to the realisation of profits, and

(ii) consists wholly or mainly of qualifying trading operations,

and a trade which during the specified period consists partly of qualifying trading operations and partly of other trading operations shall be regarded for the purposes of this subsection as a trade which consists wholly or mainly of qualifying trading operations only if the total amount receivable in the specified period by the company carrying on the trade from sales made and services rendered in the course of qualifying trading operations is not less than 75 per cent of the total amount receivable by the company from all sales made and services rendered in the course of the trade in the specified period.

(9) A claim for relief under this section may be made after the making of a material disposal and the acquisition of eligible shares in a qualifying company if all the conditions for the relief are or will be satisfied, but the relief shall be withdrawn if, by reason of the subsequent happening of any event or failure of an event to happen which at the time the relief was claimed was expected to happen, the individual by whom the relief was claimed is not entitled to the relief so claimed.

(10) The withdrawal of relief under subsection (9) shall be made—

(a) for the year of assessment in which the happening or failure to happen, as the case may be, of the event giving rise to the withdrawal of the relief occurred, and

(b) in accordance with subsection (11),

and both—

(i) details of the happening or the failure to happen, as the case may be, of the event giving rise to the withdrawal of relief, and

(ii) the amount to be treated as a gain under subsection (11),

shall be included in the return required to be made by the individual concerned under section 951 for that year of assessment.

(11) (a) Notwithstanding any other provision of the Capital Gains Tax Acts, where relief is to be withdrawn under subsection (9) for any year of assessment, such amount (in this subsection referred to as “the relevant amount”) of the chargeable gain which accrued to the reinvestor on the disposal of the original holding as was treated under subsection (2) or (4) as not accruing at that time—

(i) reduced in accordance with paragraph (b), and

(ii) increased in accordance with paragraph (c),

shall be treated as a gain which accrued in that year of assessment.

(b) The amount by which the relevant amount is to be reduced under paragraph (a)(i) is an amount equal to the aggregate of—

(i) to the extent that such excess has not been deducted in years of assessment subsequent to the year of assessment in which the disposal of the original holding occurred, the excess of the amount of the losses which would have been deducted under section 31 in the year of assessment in which the disposal of the original holding occurred, if relief under this section had not been claimed, over the amount of such losses which were so deducted in that year, and

(ii) any amount of chargeable gains in the year of assessment in which the disposal of the original holding occurred in respect of which the reinvestor would not by virtue of section 601 have been charged to capital gains tax if relief under this section had not been claimed.

(c) The amount by which the relevant amount is to be increased under paragraph (a)(ii) is an amount determined by the formula—

$$G \times R \div 100 \times M$$

where—

G is the relevant amount reduced in accordance with paragraph (b),

R is the rate per cent specified in section 1080 (1), and

M is the number of months in the period beginning on the date on which capital gains tax for the year of assessment in which the disposal of the original holding occurred was due and payable and ending on the date on which capital gains tax for the year of assessment for which the withdrawal of relief is to be made is due and payable.

(12) A chargeable gain or the balance of a chargeable gain which under subsection (2) or (4), as may be appropriate, is treated as accruing at a date later than the date of the disposal on which it accrued shall

not be so treated for the purposes of section 556.

(13) Without prejudice to the provisions of the Capital Gains Tax Acts providing generally for apportionments, where consideration is given for the acquisition or disposal of any assets some or part of which are shares or other securities to the acquisition or disposal of which a claim under this section relates and some or part of which are not, the consideration shall be apportioned in such manner as is just and reasonable.

(14) This section shall not apply unless the acquisition of a qualifying investment was made for bona fide commercial reasons and not wholly or partly for the purposes of realising a gain from the disposal of the qualifying investment.