

CHAPTER 2 Principal provisions

Relief from corporation tax. FA80 s41(1) to (5) and (8) to (9); FA92 s54; F(No.2)A92 s1; FA94 s54(b); FA95 s61; FA97 s59(2) and Sch6 PtII par1(1) and (2) 448.—(1) (a) For the purposes of this section, “relevant corporation tax” means the corporation tax which, apart from this section, sections 157 , 158 , 239 , 241 , 440 , 441 , 442 and 827 and paragraphs 16 and 18 of Schedule 32, would be chargeable for the relevant accounting period exclusive of the corporation tax chargeable on the part of the company's profits attributable to chargeable gains for that period.

(b) For the purposes of paragraph (a), the part of the company's profits attributable to chargeable gains for the relevant accounting period shall be taken to be the amount brought into the company's profits for that period for the purposes of corporation tax in respect of chargeable gains before any deduction for charges on income, expenses of management or other amounts which can be deducted from or set against or treated as reducing profits of more than one description.

(2) (a) Subject to paragraph (b), where a company which carries on a trade which consists of or includes the manufacture of goods claims and proves as respects a relevant accounting period that during that period any amount was receivable in respect of the sale in the course of the trade of goods, corporation tax payable by the company for that period, in so far as it is referable to the income from the sale of those goods, shall be reduced by twenty-six thirty-sixths, and the corporation tax referable to the income from the sale of those goods shall be such an amount as bears to the relevant corporation tax the same proportion as the income from the sale of those goods bears to the total income brought into charge to corporation tax for the relevant accounting period.

(b) Where a company which carries on a trade which consists of or includes the manufacture of goods claims and proves as respects a relevant accounting period (being an accounting period beginning before the 1st day of April, 1997, and ending on or after that date) that during that period any amount was receivable in respect of the sale in the course of the trade of goods, corporation tax payable by the company for that period, in so far as it is referable to the income from the sale of those goods, shall be reduced—

(i) by twenty-eight thirty-eighths, in so far as it is corporation tax charged on profits which under section 26 (3) are apportioned to the period beginning on the 1st day of January, 1996, and ending on the 31st day of March, 1997, and

(ii) by twenty-six thirty-sixths, in so far as it is corporation tax charged on profits which under section 26 (3) are apportioned to the period beginning on the 1st day of April, 1997, and ending on the 31st day of December, 1998,

and the corporation tax referable to the income from the sale of those goods—

(i) shall, for the purposes of subparagraph (i), be such an amount as bears to the part of the relevant corporation tax charged on profits which under section 26 (3) are apportioned to the period beginning on the 1st day of January, 1996, and ending on the 31st day of March, 1997, the same proportion as the income from

the sale of those goods bears to the total income brought into charge to corporation tax for the relevant accounting period, and

(II) shall, for the purposes of subparagraph (ii), be such an amount as bears to the part of the relevant corporation tax charged on profits which under section 26 (3) are apportioned to the period beginning on the 1st day of April, 1997, and ending on the 31st day of December, 1998, the same proportion as the income from the sale of those goods bears to the total income brought into charge to corporation tax for the relevant accounting period.

(3) For the purposes of subsection (2), “the income from the sale of those goods” shall be taken to be such sum as bears to the amount of the company's income for the relevant accounting period from the sale in the course of the trade mentioned in that subsection of goods and merchandise the same proportion as the amount receivable by the company in the relevant accounting period from the sale in the course of the trade of goods bears to the total amount receivable by the company in the relevant accounting period from the sale in the course of the trade of goods and merchandise.

(4) For the purposes of subsection (3), “the company's income for the relevant accounting period from the sale in the course of the trade mentioned in that subsection of goods and merchandise” shall be—

(a) in any case where the income from the trade is derived solely from sales of goods and merchandise, the amount of the company's income from the trade, and

(b) in any other case, such amount of the income from the trade as appears to the inspector or on appeal to the Appeal Commissioners to be just and reasonable.

(5) (a) For the purposes of this Part, the amount receivable by a company in a relevant accounting period from the sale of goods or merchandise—

(i) shall be deemed to be reduced by the amount of any duty paid or payable by the company in respect of the goods or merchandise or in respect of the materials used in their manufacture, and

(ii) shall not include any amount in respect of value-added tax chargeable on the sale of the goods or merchandise.

(b) The inspector may by notice in writing require a company making a claim for relief under this Part to furnish him or her with such information or particulars as may be necessary for the purposes of giving effect to this subsection, and subsection (2) shall apply as if the matters of which proof is required by that subsection included the information or particulars specified in a notice under this subsection.

(6) A company shall not be entitled to relief under this Part in relation to a trade as respects a relevant accounting period unless it makes a claim for the relief under subsection (2) before the date on which the assessment for the accounting period which coincides with or includes that relevant accounting period becomes final and conclusive.

(7) (a) In this subsection—

“the airport” and “the Area” have the same meanings respectively as in sections 445 and 446;

“the Minister” means the Minister for Finance;

“qualified company” includes, subject to paragraph (i), a company which has not carried on trading operations in the Area or the airport and which intends to carry on trading operations which will be relevant trading operations;

“relevant subsection” means subsection (2) of section 445 or subsection (2) of section 446, as the case may be;

“relevant taxation”, in relation to an investor or a qualified company, means any tax imposed under the laws of any state by reason of the relief.

(b) Notwithstanding any other provision of this section but subject to paragraph (c), where the Minister is satisfied that the conditions specified in paragraph (d) are met, the Minister may by notice in writing given to a qualified company reduce the fraction (in this subsection referred to as “the relief”) by which corporation tax payable, in so far as it is referable to income from relevant trading operations, is to be, or but for this subsection would be, reduced under subsection (2) by specifying in the notice such lower fraction (in this subsection referred to as “the revised relief”) as the Minister deems appropriate by which that corporation tax is to be reduced.

(c) The reduction of the relief so as to determine the revised relief shall be no greater than is necessary to secure the result specified in paragraph (d)(iv).

(d) The conditions referred to in paragraph (b) are that—

(i) some or all of the shares in the qualified company are owned directly or indirectly) by a company or companies (in this subsection referred to as “the investors”) resident outside the State, or the qualified company is resident outside the State and is trading in the State through a branch or agency,

(ii) the qualified company (in this subparagraph referred to as the “first-mentioned qualified company”) is carrying on, or is about to carry on, a trade in the State which includes or consists of relevant trading operations and with levels of activity and employment in the State in relation to those operations either in the first-mentioned qualified company, or in another qualified company with which the first-mentioned qualified company has entered into an agreement in order to carry on such operations, which, having regard to the certificate issued or to be issued to the first-mentioned qualified company or the other qualified company, as the case may be, under the relevant subsection, are substantial and contribute, or will contribute, to the development of the Area as an International Financial Services Centre, or to the development of the airport, as the case may be,

(iii) the manner in which the investors or the qualified company, as the case may be, would but for this subsection be subject to relevant taxation in respect of income from relevant trading operations would result in the qualified company ceasing to carry on relevant trading operations carried on by it, or not carrying on relevant trading operations, as the case may be, in the State, and

(iv) the revised relief would ensure that all or a substantial part of the relevant trading operations of the qualified company will continue to be carried on, or will be carried on, as the case may be, in the State to an extent that they will continue to contribute, or will contribute, to the development of the Area as an International Financial Services Centre, or to the development of the airport, as the case may be.

(e) Where the Minister has given a notice pursuant to paragraph (b), subsection (2) shall apply as if the revised relief were substituted for the relief.

(f) Notwithstanding any other provision of this section, the Minister may, subject to paragraph (c), by notice given in writing to the qualified company—

(i) increase or decrease the revised relief specified in a preceding notice given to the qualified company under this subsection, or

(ii) reinstate the relief,

and, where the Minister has given such notice, paragraph (e) shall apply as if the revised relief specified in the notice given under paragraph (b) were the revised relief specified under this paragraph or the relief shall be reinstated, as the case may be.

(g) A notice given by the Minister under this subsection specifying a revised relief or an increase or decrease in such revised relief or a reinstatement of the relief shall have effect from the date specified in the notice which may be a date preceding the date on which the notice is given.

(h) Subject to paragraph (i), this subsection shall be construed together with sections 445 and 446.

(i) In so far as this subsection is to be construed together with section 445, it shall be so construed only in so far as the relevant trading operations carried on by a qualified company within the meaning of that section are trading operations which could be certified by the Minister as relevant trading operations for the purposes of section 446 if they were carried on in the Area rather than the airport.