

Tax clearance certificates in relation to certain licences. FA92 s242; FA93 s140; FA97 s160(1) 1094.—(1) In this section—

“the Acts” means—

- (a) the Tax Acts,
 - (b) the Capital Gains Tax Acts, and
 - (c) the Value-Added Tax Act, 1972 , and the enactments amending or extending that Act,
- and any instruments made thereunder;

“beneficial holder of a licence” means the person who conducts the activities under the licence and, in relation to a licence issued under the Auctioneers and House Agents Act, 1947 , includes the authorised individual referred to in section 8(4), or the nominated individual referred to in section 9(1), of that Act;

“licence” means a licence or authorisation, as the case may be, of the kind referred to in—

- (a) the proviso of the Finance Act, 1992) to section 49(1) of the Finance (1909-1910) Act, 1910,
- (b) the further proviso (1) of the Finance Act, 1993) to section 49(1) of the Finance (1909-1910) Act, 1910,
- (c) the proviso (2) of the Finance Act, 1993) to section 7 (3) of the Betting Act, 1931 ,
- (d) the proviso (3) of the Finance Act, 1993) to section 19 of the Gaming and Lotteries Act, 1956 ,
- (e) the proviso (4) (a) of the Finance Act, 1993) to subsection (1) of section 8 of the Auctioneers and House Agents Act, 1947 ,
- (f) the proviso (4) (b) of the Finance Act, 1993) to subsection (1) of section 9 of the Auctioneers and House Agents Act, 1947 (an auction permit under that section being deemed for the purposes of this section to be a licence),
- (g) the proviso (4) (c) of the Finance Act, 1993) to subsection (1) of section 10 of the Auctioneers and House Agents Act, 1947 ,
- (h) the proviso (5) of the Finance Act, 1993) to paragraph 12(12) of the Imposition of Duties (No. 221) (Excise Duties) Order, 1975),
- (i) the proviso (6) of the Finance Act, 1993) to paragraph (b) of subsection (3) of section 45 of the Finance Act, 1989 , and

(j) section 93 , 116 or 144 of the Consumer Credit Act, 1995 ;

“specified date” means the date of commencement of a licence sought to be granted under any of the provisions referred to in paragraphs (a) to (i) of the definition of “licence” as specified for the purposes of a tax clearance certificate under subsection (2);

“tax clearance certificate” shall be construed in accordance with subsection (2).

(2) Subject to subsection (3), the Collector-General shall, on an application to him or her by the person who will be the beneficial holder of a licence due to commence on a specified date, issue a certificate (in this section referred to as a “tax clearance certificate”) for the purposes of the grant of a licence if—

(a) that person and, in respect of the period of that person's membership, any partnership of which that person is or was a partner,

(b) in a case where that person is a partnership, each partner,

(c) in a case where that person is a company, each person who is either the beneficial owner of, or able directly or indirectly to control, more than 50 per cent of the ordinary share capital of the company,

has or have complied with all the obligations imposed on that person or on them by the Acts in relation to—

(i) the payment or remittance of the taxes, interest and penalties required to be paid or remitted under the Acts, and

(ii) the delivery of returns.

(3) Subject to subsection (4), where a person (in this section referred to as “the first-mentioned person”) will be the beneficial holder of a licence due to commence on a specified date and another person (in this section referred to as “the second-mentioned person”) was the beneficial holder of the licence at any time during the year ending on that date, and—

(a) the second-mentioned person is a company connected as it applies for the purposes of the Tax Acts) with the first-mentioned person or would have been such a company but for the fact that the company has been wound up or dissolved without being wound up,

(b) the second-mentioned person is a company and the first-mentioned person is a partnership in which—

(i) a partner is or was able, or

(ii) where more than one partner is a shareholder, those partners together are or were able,

directly or indirectly, whether with or without a connected person or connected persons as it applies

for the purposes of the Tax Acts), to control more than 50 per cent of the ordinary share capital of the company, or

(c) the second-mentioned person is a partnership and the first-mentioned person is a company in which—

(i) a partner is or was able, or

(ii) where more than one partner is a shareholder, those partners together are or were able,

directly or indirectly, whether with or without a connected person or connected persons as it applies for the purposes of the Tax Acts), to control more than 50 per cent of the ordinary share capital of the company,

then, a tax clearance certificate shall not be issued by the Collector-General under subsection (2) unless, in relation to the activities conducted under the licence, the second-mentioned person has complied with the second-mentioned person's obligations under the Acts as specified in subsection (2).

(4) Subsection (3) shall not apply to a transfer of a licence effected before the 24th day of April, 1992, or to such transfer effected after that date where a contract for the sale or lease of the premises to which the licence relates was signed before that date.

(5) An application for a tax clearance certificate under this section shall be made to the Collector-General in a form prescribed by the Revenue Commissioners and shall specify the commencement date of the licence to which the application relates and, where that licence is for a period of less than one year, the licensing period.

(6) Where an application for a tax clearance certificate under this section is refused by the Collector-General, he or she shall as soon as is practicable communicate in writing such refusal and the grounds for such refusal to the person concerned.

(7) (a) Where an application under this section to the Collector-General for a tax clearance certificate is refused, the person aggrieved by the refusal may, by notice in writing given to the Collector-General within 30 days of the refusal, apply to have such person's application heard and determined by the Appeal Commissioners; but no right of appeal shall exist by virtue of this section in relation to any amount of tax or interest due under the Acts.

(b) A notice under paragraph (a) shall be valid only if—

(i) that notice specifies—

(I) the matter or matters with which the person is aggrieved, and

(II) the grounds in detail of the person's appeal as respects each such matter,

and

(ii) any amount under the Acts which is due to be remitted or paid, and which is not in dispute, is duly remitted or paid.

(c) The Appeal Commissioners shall hear and determine an appeal made to them under this subsection as if it were an appeal against an assessment to income tax and, subject to paragraph (d), the provisions of the Income Tax Acts relating to such an appeal (including the provisions relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law) shall apply accordingly with any necessary modifications.

(d) On the hearing of an appeal made under this subsection, the Appeal Commissioners shall have regard to all matters to which the Collector-General is required to have regard under this section.