

Relief for new shares purchased on issue by employees. FA86 s12(1) to (8); FA96 s12 and s132(1) and Sch5 Ptl par15 479.—(1) (a) In this section—

“director” has the same meaning as in Chapter 3 of Part 5;

“eligible employee”, in relation to a qualifying company, means—

(i) where the company is a trading company, a director or an employee of the company, or

(ii) where the company is a holding company, a director or an employee of the company or of a company which is its 75 per cent subsidiary;

“eligible shares”, in relation to a qualifying company, means new shares forming part of the ordinary share capital of the company which—

(i) are fully paid up,

(ii) throughout the period of 5 years beginning with the date on which they are issued, carry no present or future preferential right to dividends or to the company's assets on its winding up and no present or future preferential right to be redeemed,

(iii) are not subject to any restrictions other than restrictions which attach to all shares of the same class, and

(iv) are issued to and acquired by an eligible employee in relation to the company at not less than their market value at the time of issue;

“holding company” means a company whose business consists wholly or mainly of the holding of shares or securities of trading companies which are its 75 per cent subsidiaries;

“market value” shall be construed in accordance with section 548;

“qualifying company” means a company which at the time the eligible shares are issued is—

(i) incorporated in the State,

(ii) resident in the State and not resident elsewhere, and

(iii) (I) a trading company, or

(II) a holding company;

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

mainly in the State of a trade or trades; “75 per cent subsidiary”, in relation to a company, has the meaning assigned to it for the purposes of the Corporation Tax Acts by section 9, as applied for the purposes of section 411 by paragraphs (b) and (c) of subsection (1) of that section.

(b) References in this section to a disposal of shares include references to a disposal of an interest or right in or over the shares, and an individual shall be treated for the purposes of this section as disposing of any shares which he or she is treated by virtue of section 587 as exchanging for other shares.

(c) Shares in a company shall not be treated for the purposes of this section as being of the same class unless they would be so treated if dealt in on a stock exchange in the State.

(2) Subject to this section, where an eligible employee in relation to a qualifying company subscribes for eligible shares in the qualifying company, the eligible employee shall be entitled to have a deduction made from his or her total income for the year of assessment in which the shares are issued of an amount equal to the amount of the subscription; but a deduction shall not be given to the extent to which the amount subscribed by an eligible employee for eligible shares issued to him or her in all years of assessment exceeds £5,000.

(3) Subsection (2) shall not apply as respects any amount subscribed for eligible shares if within the period of 5 years from the date of their acquisition—

(a) those shares are disposed of, or

(b) the eligible employee who made the subscription receives in respect of those shares any money or money's worth which does not constitute income in his or her hands for the purpose of income tax,

and there shall be made all such assessments, additional assessments or adjustments of assessments as are necessary to withdraw any relief from income tax already given under subsection (2) in respect of the amount subscribed; but, where an event mentioned in paragraph (a) or (b) occurs after the fourth anniversary of the date on which the shares were issued to the eligible employee, relief shall be withdrawn only to the extent of 75 per cent of the amount which would otherwise be withdrawn.

(4) Except where the shares are in a company whose ordinary share capital, at the time of acquisition of the shares by the eligible employee, consists of shares of one class only, the majority of the issued shares of the same class as the eligible shares shall be shares other than—

(a) eligible shares, and

(b) shares held by persons who acquired their shares in pursuance of a right conferred on them or an opportunity afforded to them as a director or employee of the qualifying company or any of its 75 per cent subsidiaries.

(5) In relation to shares in respect of which relief has been given under subsection (2) and not withdrawn, any question—

(a) as to which (if any) such shares issued to an eligible employee at different times a disposal relates, or

(b) whether a disposal relates to such shares or to other shares,

shall for the purposes of this section be determined as for the purposes of section 498.

(6) Where there occurs in relation to any of the eligible shares of an eligible employee (in this subsection referred to as “the original holding”) a transaction which results in a new holding ) being equated with the original holding for the purposes of capital gains tax, then, for the purposes of subsection (3)—

(a) the new holding shall be treated as shares in respect of which relief under this section has been given,

(b) the transaction shall not be treated as involving a disposal of the original holding,

(c) the consideration for the disposal of the original holding to the extent that it consists of the new holding shall not be treated as money or money's worth, and

(d) a disposal of the whole or a part of the new holding shall be treated as a disposal of the whole or a corresponding part of the shares in respect of which relief has been given under this section.

(7) Any amount in respect of which relief is allowed under subsection (2) and not withdrawn shall be treated as a sum which by virtue of section 554 is to be excluded from the sums allowable under section 552.

(8) An eligible employee shall not be entitled to relief under subsection (2) in respect of any shares unless the shares are subscribed for and issued for bona fide commercial reasons and not as part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.