

Special portfolio investment accounts. FA93 s14 (other than proviso to sub(4)(c) and sub(6)(b)); FA94 s12(2) and s34(b); FA95 s11(2); FA96 s37(1); FA97 s31, s146(1) and Sch9 Ptl par17(1) 838.—(1) (a) In this section—

“designated broker” means a person—

(i) which is a dealing member firm of the Irish Stock Exchange or a member firm (which carries on a trade in the State through a branch or agency) of a stock exchange of any other Member State of the European Communities, and

(ii) which has sent to the Revenue Commissioners a notification of its name and address and of its intention to accept specified deposits;

“gains” means chargeable gains within the meaning of the Capital Gains Tax Acts, including gains which but for section 607 would be chargeable gains;

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

“ordinary shares” means shares forming part of a company's ordinary share capital;

“qualifying shares” means ordinary shares in a company which are—

(i) listed in the official list of the Irish Stock Exchange, or

(ii) quoted on the market known as the Developing Companies Market, or the market known as the Exploration Securities Market, of the Irish Stock Exchange,

other than—

(I) shares in an investment company within the meaning of Part XIII of the Companies Act, 1990 ,

(II) shares in an undertaking for collective investment in transferable securities within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 ), or

(III) shares in a company, being shares the market value of which may be expected to approximate at all times to the market value of the proportion of the assets of the company which they represent;

“relevant income or gains” means the aggregate of the income and gains, including losses, arising from relevant investments, but only so much of income arising to or gains accruing to the special portfolio investment account shall be relevant income or gains as is or is to be—

(i) paid to, or

(ii) accumulated or invested for the benefit of,

the individual in whose name the special portfolio investment account is held, or would be so paid, accumulated or invested if any gains accruing to the account in accordance with subsection (4)(e) were gains on an actual disposal of the assets concerned;

“relevant investment” means an investment in—

(i) qualifying shares and specified qualifying shares, or

(ii) qualifying shares, specified qualifying shares and securities,

as the case may be, acquired by a designated broker by the expenditure of money contributed by means of a specified deposit, and held by a designated broker in a special portfolio investment account;

“securities” means securities—

(i) issued under the authority of the Minister for Finance, or

(ii) issued by the Electricity Supply Board, Radio Telefís Éireann, ICC Bank plc, Bord Telecom Éireann, Irish Telecommunications Investments plc, Córas Iompair Éireann, ACC Bank plc, Bord na Móna, Aerlínte Éireann cuideachta phoiblí theoranta, Aer Lingus plc or Aer Rianta cuideachta phoiblí theoranta,

which are listed in the official list of the Irish Stock Exchange;

“special portfolio investment account” means an account opened on or after the 1st day of February, 1993, in which a relevant investment is held and in respect of which the conditions referred to in paragraph (c) are complied with;

“specified deposit” means a sum of money paid by an individual to a designated broker for the purpose of acquiring assets which will form part of a relevant investment;

“specified qualifying shares”, in relation to a special portfolio investment account, means qualifying shares in a company which when the shares are acquired for the account has an issued share capital the market value of which is less than £100,000,000.

(b) For the purposes of this section, Chapter 4 of Part 8 shall be construed as if—

(i) references to “deposit”, “interest”, “relevant deposit”, “relevant deposit taker”, “relevant interest” and “special savings account” were respectively references to “specified deposit”, “income or gains”, “relevant investment”, “designated broker”, “relevant income or gains” and “special portfolio investment account” within the meaning of this section, and

(ii) subsections (4) and (5) of section 258 and section 259 had not been enacted.

(c) Notwithstanding subsection (3), section 264 shall apply to a special portfolio investment account as if—

(i) paragraphs (d) to (i) of subsection (1) of that section had not been enacted, and

(ii) the conditions in subsection (2) of this section had been included in subsection (1) of that section.

(2) The conditions referred to in subsection (1)(c)(ii) are:

(a) each special portfolio investment account and all assets held in such an account shall be kept separately from all other investment accounts, if any, operated by a designated broker;

(b) the amount of a specified deposit or, if there is more than one, the aggregate of such amounts in respect of assets held at the same time as part of a special portfolio investment account shall not exceed—

(i) in the case of a special portfolio investment account in respect of which—

(I) the first specified deposit was made on or before the 5th day of April, 2000, and

(II) an amount (in this paragraph referred to as “the particular amount”) equal to the whole or a part of the specified deposit or specified deposits has been used to acquire shares in a company quoted on the market known as the Developing Companies Market of the Irish Stock Exchange

and those shares are at that time held as assets of the special portfolio investment account,

£50,000 increased by the lesser of—

(A) the particular amount, and

(B) £10,000,

and

(ii) in the case of any other special portfolio investment account, £50,000;

(c) the designated broker shall ensure that the aggregate of the market value of a relevant investment does not exceed £50,000 at any time on or after the fifth anniversary of the date on which the first specified deposit was made by an individual in respect of that relevant investment;

(d) the aggregate of the consideration given for shares which are at any time before the 1st day of February, 1994, assets of a special portfolio investment account shall not be less than—

(i) as respects qualifying shares, 40 per cent, and

(ii) as respects specified qualifying shares, 6 per cent,

of the aggregate of the consideration given for the assets of the account at that time;

(e) the aggregate of the consideration given for shares which are at any time within the year ending on the 31st day of January, 1995, assets of a special portfolio investment account shall not be less than—

(i) as respects qualifying shares, 45 per cent, and

(ii) as respects specified qualifying shares, 9 per cent,

of the aggregate of the consideration given for the assets of the account at that time;

(f) the aggregate of the consideration given for shares which are at any time within the year ending on the 31st day of January, 1996, assets of a special portfolio investment account shall not be less than—

(i) as respects qualifying shares, 50 per cent, and

(ii) as respects specified qualifying shares, 10 per cent,

of the aggregate of the consideration given for the assets of the account at that time;

(g) the aggregate of the consideration given for shares which are at any time on or after the 1st day of February, 1996, assets of a special portfolio investment account shall not be less than—

(i) as respects qualifying shares, 55 per cent, and

(ii) as respects specified qualifying shares, 10 per cent,

of the aggregate of the consideration given for the assets of the account at that time;

and for the purposes of—

(I) paragraphs (b) and (c), a disposal of shares or securities, being shares or securities, as the case may be, of the same class acquired for a special portfolio investment account at different times, shall be assumed to be a disposal of shares or securities, as the case may be, acquired later, rather than of shares or securities, as the case may be, acquired earlier for the special portfolio investment account, and

(II) paragraphs (d) to (g), the amount of the consideration given for shares shall be determined in accordance with sections 547 and 580.

(3) Chapter 4 of Part 8 ) shall, subject to this section and with any other necessary modifications, apply to special portfolio investment accounts as it applies to special savings accounts; but that Chapter shall so apply as if, in relation to relevant interest payable in respect of a relevant deposit or relevant deposits held in a special savings account, the rate of appropriate tax were 10 per cent.

(4) (a) Paragraphs (b) to (h) shall apply notwithstanding any other provision of the Tax Acts and the Capital Gains Tax Acts.

(b) Where for any year of assessment a loss arises from the computation of relevant income or gains, that loss shall be included in the computation of the relevant income or gains of the special portfolio investment account for the next year of assessment, and, in so far as relief for the loss cannot be so given, it shall be set against such relevant income or gains in the next year of assessment and, where appropriate, in each subsequent year of assessment in so far as it cannot be so relieved, and no further relief shall be allowed under any provision of the Tax Acts or the Capital Gains Tax Acts in respect of that loss.

(c) Sections 556, 601, 607 and 1028(4) shall not apply in relation to any gains referable to a relevant investment.

(d) (i) In this paragraph—

“the appropriate amount in respect of the interest” means the appropriate amount in respect of the interest which would be determined in accordance with Schedule 21 if the designated broker were the first buyer and the designated broker carried on a trade to which section 749 (1) applies; but, in so determining the appropriate amount in respect of the interest in accordance with Schedule 21, paragraph 3(4) of that Schedule shall apply as if “in the opinion of the Appeal Commissioners” were deleted;

“securities” has the same meaning as in section 815.

(ii) Subject to subparagraph (iii), where—

(I) in a year of assessment (in this subparagraph referred to as “the first year of assessment”) securities which are assets of a special portfolio investment account are disposed of, and

(II) in the following year of assessment interest becoming payable in respect of the securities is receivable by the special portfolio investment account,

then, for the purposes of computing the relevant income or gains for the first year of assessment, the price paid by the designated broker for the securities shall be treated as reduced by the appropriate amount in respect of the interest.

(iii) Where for a year of assessment subparagraph (ii) applies so as to reduce the price paid for securities, the amount by which the price paid for the securities is reduced shall be treated as a loss arising in the following year of assessment from the disposal of the securities.

(e) For the purpose of computing relevant income or gains of a special portfolio investment account for a year of assessment, each asset of a special portfolio investment account on the 5th day of April in that year of assessment shall be deemed to have been disposed of and immediately reacquired by the designated broker on that day at the asset's market value on that day.

(f) Subject to subsection (5), where in a year of assessment the relevant income or gains of a special

portfolio investment account includes a distribution from a company resident in the State—

(i) the aggregate of the amount or value of that distribution and the amount of the tax credit in respect of that distribution shall be taken into account in computing the relevant income or gains for that year of assessment, and

(ii) the designated broker may set the tax credit against appropriate tax payable in respect of that special portfolio investment account for the year of assessment in which the distribution is made and, where the tax credit exceeds that appropriate tax, may claim to have the excess paid to the designated broker in that person's capacity as the designated broker for that special portfolio investment account.

(g) A tax credit in respect of a distribution to which paragraph (f) applies shall not be available for any purpose other than that specified in that paragraph.

(h) Capital gains tax shall not be chargeable on the disposal of assets held as part of a relevant investment; but this paragraph shall not prevent any such disposals from being taken into account in computing the amount of relevant income or gains on which appropriate tax is payable.

(5) (a) In this subsection—

“eligible shares” has the same meaning as in section 488;

“qualifying company” has the meaning assigned to it by section 495.

(b) Without prejudice to the treatment of losses on eligible shares as allowable losses, gains accruing on the disposal or deemed disposal of eligible shares in a qualifying company shall not for the purposes of computing appropriate tax in accordance with subsection (6) be treated as gains.

(c) Distributions included in the relevant income or gains of a special portfolio investment account in respect of eligible shares in qualifying companies shall not be taken into account in computing appropriate tax in accordance with subsection (6); but, notwithstanding subsection (4)(f) or section 136, the tax credit in respect of a distribution to which this subsection applies shall be disregarded for the purposes of the Tax Acts and the Capital Gains Tax Acts.

(6) (a) For the purposes of sections 257 and 258, a designated broker shall, in relation to each special portfolio investment account—

(i) be deemed to have made a payment on the 5th day of April in each year of assessment of the amount of relevant income or gains for that year of assessment, and

(ii) be liable to make a payment of appropriate tax in relation to such payment.

(b) The designated broker may deduct an amount on account of any such payment of appropriate tax and the individual beneficially entitled to the assets in the special portfolio investment account shall allow such deduction from any income or from the proceeds of the sale of any assets which the designated broker holds as

part of the special portfolio investment account; but, where there are no such funds or insufficient funds available out of which the designated broker may satisfy the appropriate tax, the amount of such tax shall be an amount due to the designated broker from the person beneficially entitled to the relevant investment.

(c) For the purposes of this section, section 258 shall apply as if in subsection (2) of that section “on or before the 1st day of November following that year of assessment” were substituted for “within 15 days from the end of the year of assessment”.

(7) Part 16 shall not apply in relation to any shares which form part of a relevant investment.