

Preferential loan arrangements. ITA67 s195B(3) and (6); FA82 s8(1) to (5), (7) and (9); FA89 s6; FA 93 s10(1); FA95 s9; FA97 s146(1) and Sch9 Ptl par12(1) 122.—(1) (a) In this section—

“employee”, in relation to an employer, means an individual employed by the employer in an employment to which Chapter 3 of this Part applies, including, in a case where the employer is a body corporate, a director (within the meaning of that Chapter) of the body corporate;

“employer”, in relation to an individual, means—

(i) a person of whom the individual or the spouse of the individual is an employee,

(ii) a person of whom the individual becomes an employee subsequent to the making of a loan by the person to the individual, and while any part of the loan, or of another loan replacing it, is outstanding, or

(iii) a person connected with a person referred to in paragraph (i) or (ii);

“loan” includes any form of credit, and references to a loan include references to any other loan applied directly or indirectly towards the replacement of another loan;

“preferential loan” means a loan, in respect of which no interest is payable or interest is payable at a preferential rate, made directly or indirectly to an individual or to the spouse of the individual by a person who in relation to the individual or the spouse is an employer, but does not include any such loan in respect of which interest is payable at a rate that is not less than the rate of interest at which the employer in the course of the employer's trade makes equivalent loans for similar purposes at arm's length to persons other than employees or their spouses;

“preferential rate” means a rate less than the specified rate;

“the specified rate”, in relation to a preferential loan, means—

(i) in a case where—

(I) the interest paid on the preferential loan qualifies for relief under section 244, or

(II) if no interest is paid on the preferential loan, the interest which would have been paid on that loan (if interest had been payable) would have so qualified,

the rate of 7 per cent per annum or such other rate (if any) prescribed by the Minister for Finance by regulations,

(ii) in a case where—

(I) the preferential loan is made to an employee by an employer,

(II) the making of loans for the purposes of purchasing a dwelling house for occupation by the borrower as a residence, for a stated term of years at a rate of interest which does not vary for the duration of the loan, forms part of the trade of the employer, and

(III) the rate of interest at which, in the course of the employer's trade at the time the preferential loan is or was made, the employer makes or made loans at arm's length to persons, other than employees, for the purposes of purchasing a dwelling house for occupation by the borrower as a residence is less than 7 per cent per annum or such other rate (if any) prescribed by the Minister for Finance by regulations,

the first-mentioned rate in subparagraph (III), or

(iii) in any other case, the rate of 11 per cent per annum or such other rate (if any) prescribed by the Minister for Finance by regulations.

(b) For the purposes of this section, a person shall be regarded as connected with another person if such person would be so regarded for the purposes of section 250.

(c) In this section, a reference to a loan being made by a person includes a reference to a person assuming the rights and liabilities of the person who originally made the loan and to a person arranging, guaranteeing or in any way facilitating a loan or the continuation of a loan already in existence.

(2) Where an individual has at any time during a year of assessment a preferential loan or loans made directly or indirectly to him or her by a person who at the time the loan is made is, or who at a time subsequent to the making of the loan becomes, an employer in relation to the individual, the individual shall, subject to subsection (4), be treated for the purposes of section 112 or, in a case where profits or gains from an employment with that person would be chargeable to tax under Case III of Schedule D, for the purposes of a charge to tax under that Case as having received in that year of assessment as a perquisite of an office or employment with that person a sum equal to—

(a) if no interest is payable on the preferential loan or loans, the amount of interest which would have been payable in that year if interest had been payable on the loan or loans at the specified rate, or

(b) if interest is paid or payable at a preferential rate or rates, the difference between the aggregate amount of interest paid or payable in that year and the amount of interest which would have been payable in that year if interest had been payable on the loan or loans at the specified rate,

and the individual or, in the case of an individual whose spouse is chargeable to tax for the year of assessment in accordance with section 1017, the spouse of the individual shall be charged to tax accordingly.

(3) Where an individual has a loan made to him or her directly or indirectly in any year of assessment by a person who at the time the loan is made is, or who at a time subsequent to the making of the loan becomes, an employer in relation to the individual and the loan or any interest payable on the loan is released or written off in whole or in part—

(a) the individual shall be deemed for the purposes of section 112 or, in a case where profits or gains

from an employment with that person would be chargeable to tax under Case III of Schedule D, for the purposes of a charge to tax under that Case to have received in the year of assessment in which the release or writing off took place as a perquisite of an office or employment with that person a sum equal to the amount which is released or written off, and

(b) the individual or, in the case of an individual whose spouse is chargeable to tax for the year of assessment in accordance with section 1017, the spouse of the individual shall be charged to tax accordingly.

(4) Where for any year of assessment a sum is chargeable to tax under subsection (2) in respect of a preferential loan or loans or under subsection (3) in respect of an amount of interest written off or released, the individual to whom the loan or loans was or were made shall be deemed for the purposes of section 244 to have paid in the year of assessment an amount or additional amount of interest, as the case may be, on the loan or loans equal to such sum or the individual by whom the interest written off or released was payable shall be deemed for those purposes to have paid in the year of assessment the interest released or written off.

(5) This section shall not apply to a loan made by an employer, being an individual, and shown to have been made in the normal course of his or her domestic, family or personal relationships.

(6) Any amount chargeable to tax by virtue of this section shall not be emoluments for the purpose of section 472.

(7) Every regulation made under this section shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the regulation is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.