

The relief. FA84 s12(1), (3) to (6A), (8) and (10) to (11); FA85 s13(b); FA87 s8(b); FA90 s10(b) and s34(1)(a) and (b)(ii), (2) and (4); FA91 s15(1)(a); FA93 s25(b)(i), (iii), (iv), (v) and (vi); FA95 s17(b); FA96 s17 489.—(1) This Part shall apply for affording relief from income tax where, subject to subsection (2)—

(a) an individual who qualifies for the relief subscribes for eligible shares in a qualifying company,

(b) those shares are issued to the individual for the purpose of raising money for a qualifying trade being carried on by the company or which the company intends to carry on, and

(c) the company provides satisfactory evidence, and it appears to the Revenue Commissioners after such consultation, if any, as may seem to them to be necessary with such person or body of persons as in their opinion may be of assistance to them, that the money was used, is being used or is intended to be used—

(i) for the purposes of—

(I) enabling the company, or enlarging its capacity, to undertake qualifying trading operations,

(II) enabling the company to engage in, or assisting the company in—

(A) research and development,

(B) the acquisition of technological information and data,

(C) the development of new or existing products or services, or

(D) the provision of new products or services,

(III) enabling the company to identify new markets, and to develop new and existing markets, for its products and services, or

(IV) enabling the company to increase its sales of products or provision of services,

and

(ii) with a view to the creation or maintenance of employment—

(I) in the company, or

(II) in the case of qualifying trading operations referred to in section 496 (2)(a)(ix), in either or both a company contracted to construct the advance factory building concerned and a company which enters into a lease for its use.

(2) Where the money raised for the purpose specified in subsection (1)(b) was used, is being used or is intended to be used—

(a) for the purposes of qualifying trading operations referred to in section 496 (2)(a)(iv) and in respect of which money is raised or intended to be raised under this Part by virtue of section 496 (2)(a)(iv)(II), the evidence referred to in subsection (1)(c) shall include the certificate referred to in section 496 (5),

(b) for the purposes of qualifying trading operations referred to in section 496 (2)(a)(vii), the evidence referred to in subsection (1)(c) shall include the certificate referred to in section 496 (7),

(c) for the purposes of qualifying trading operations referred to in section 496 (2)(a)(x) (in this paragraph referred to as “the operations”), the evidence referred to in subsection (1)(c) shall include a certificate by an industrial development agency certifying that it is satisfied that the operations—

(i) have the potential to result in the commencement of qualifying trading operations referred to in subparagraphs (i), (ii) and (viii) of section 496 (2)(a), and

(ii) have commenced,

(d) for the purposes of qualifying trading operations referred to in section 496 (2)(a)(xii), the evidence referred to in subsection (1)(c) shall include the certificate referred to in section 496 (8),

(e) for the purpose of the construction and the leasing of an advance factory building, the evidence referred to in subsection (1)(c) shall include a certificate by an industrial development agency certifying that it has satisfied itself that—

(i) the building is or will be an advance factory building, and

(ii) (I) the advance factory building is or will be situated in an area which, on the basis of guidelines agreed with the consent of the Minister for Finance between the industrial development agency and the Minister for Enterprise, Trade and Employment or the Minister for Arts, Heritage, Gaeltacht and the Islands (as may be appropriate in the circumstances), was or is in particular need of development and of the creation of opportunities for employment, and

(II) the construction of the advance factory building contributes or will contribute significantly to meeting those needs, and

(f) for the purposes of relevant trading operations, the evidence referred to in subsection (1)(c) shall include a certificate under section 497 (2).

(3) Subject to subsections (4) and (5), relief in respect of the amount subscribed by an individual for any eligible shares shall be given as a deduction of that amount from his or her total income for the year of assessment in which the shares are issued.

(4) Where—

(a) in accordance with section 508, relief is due in respect of an amount subscribed as nominee for a qualifying individual by the managers of a designated fund, and

(b) the eligible shares in respect of which the amount is subscribed are issued in the year of assessment following the year of assessment in which that amount was subscribed to the designated fund,

the individual may elect by notice in writing to the inspector to have the relief due given as a deduction from his or her total income for the year of assessment in which the amount was subscribed to the designated fund, instead of (as provided for in subsection (3)) as a deduction from his or her total income for the year of assessment in which the shares are issued.

(5) (a) Subject to this subsection, a specified individual may, in relation to a relevant investment made by such individual (being that individual's first such investment), elect by notice in writing to the inspector to have the relief due given as a deduction from such individual's total income for any one of the 5 years of assessment immediately before the year of assessment in which the eligible shares in respect of that investment are issued which such individual nominates for the purpose, instead of (as provided for in subsection (3)) as a deduction from the specified individual's total income for the year of assessment in which the shares are issued, and accordingly, subject to section 490 and paragraphs (c) and (d), for the purpose of granting such relief (but for no other purpose of this Part) the shares shall be deemed to have been issued in the year of assessment so nominated.

(b) Where the specified individual makes a subsequent relevant investment (being that individual's second such investment)—

(i) in the same company as such individual's first such investment, and

(ii) within either the year of assessment following the end of the year of assessment in which such individual's first such investment was made or the year of assessment subsequent to that year,

then, the specified individual may, in relation to such individual's second such investment, elect by notice in writing to the inspector to have the relief due given as a deduction from such individual's total income for any one of the 5 years of assessment immediately before the year of assessment in which the eligible shares in respect of such individual's first such investment were issued which such individual nominates for the purpose, instead of (as provided for in subsection (3)) as a deduction from such individual's total income for the year of assessment in which the eligible shares in respect of such individual's second such investment are issued, and accordingly, subject to section 490 and paragraphs (c) and (d), for the purpose of granting such relief (but for no other purpose of this Part) the shares issued in respect of the second such investment shall be deemed to have been issued in the year of assessment so nominated.

(c) Where any of the years of assessment following the year of assessment nominated under paragraph (a) or (b), as the case may be, precede the year of assessment in which the eligible shares in respect of the specified individual's first relevant investment are in fact issued, subsections (3) to (5) of section 490

shall operate to give relief in such years of assessment as may be nominated by such individual for that purpose.

(d) To the extent that the amount of the relief which would be due in respect of the specified individual's first relevant investment or second relevant investment, as the case may be, has not been given in accordance with paragraphs (a) to (c) it shall, subject to subsections (3) to (5) of section 490, be given for the year of assessment in which the eligible shares in respect of the first such investment or the second such investment, as the case may be, are in fact issued or, if appropriate, a subsequent year of assessment.

(e) This subsection shall apply in respect of not more than 2 relevant investments made by a specified individual on or after the 2nd day of June, 1995.

(6) References in this Part to the amount of the relief are references to the amount of the deduction given under subsection (3), (4) or (5) (as may be appropriate).

(7) (a) Subject to paragraphs (b) and (c), the relief shall be given on a claim and shall not be allowed—

(i) (I) in the case of a relevant investment, unless and until the company commences to carry on the relevant trading operations, and

(II) in any other case, unless and until the company has carried on the trade for 4 months, and

(ii) if the company is not carrying on that trade at the time when the shares are issued, unless the company—

(I) expends not less than 80 per cent of the money subscribed for the shares on research and development work which is connected with and undertaken with a view to the carrying on of the trade, and begins to carry on the trade within 3 years after that time,

or

(II) otherwise begins to carry on the trade within 2 years after that time.

(b) In the case of qualifying trading operations referred to in section 496 (2)(a)(ix), for the purposes of paragraph (a), the trade shall be deemed to have commenced on the date on which the construction of the advance factory building commenced.

(c) In the case of qualifying trading operations referred to in section 496 (2)(a)(x), for the purposes of paragraph (a), the trade shall be deemed to have commenced on the date on which the certificate referred to in subsection (2)(c) was issued.

(8) Subject to subsection (7)(a)(i), a claim for relief may be allowed at any time if the conditions for the relief are then satisfied.

(9) In the case of a claim allowed before the end of the relevant period, the relief shall be withdrawn if by reason of any subsequent event it appears that the claimant was not entitled to the relief allowed.

(10) In the case of a claim allowed before a specified individual commences a relevant employment with the company in which that individual has made a relevant investment (being that individual's first such investment), the relief shall be withdrawn if the specified individual fails to commence such employment—

(a) within the year of assessment in which the investment is made, or

(b) if later, within 6 months of the date of—

(i) where the investment consists of the subscription of only one amount for eligible shares, that subscription, or

(ii) where the investment consists of the subscription of more than one amount for eligible shares, the last such subscription.

(11) Where by reason of its being wound up, or dissolved without winding up, the company carries on the qualifying trade for a period shorter than 4 months, subsection (7)(a)(i) shall apply as if it referred to that shorter period but only if it is shown that the winding up or dissolution was 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 was the avoidance of tax.

(12) Subject to section 506, no account shall be taken of the relief, in so far as it is not withdrawn, in determining whether any sums are excluded by virtue of section 554 from the sums allowable as a deduction in the computation of gains and losses for the purposes of the Capital Gains Tax Acts.

(13) Where an individual is entitled to relief under this section in respect of a subscription by him or her for eligible shares in a company, he or she shall not be entitled to relief in respect of that subscription under section 479.

(14) (a) In this subsection, “distribution” has the same meaning as in the Corporation Tax Acts.

(b) For the purposes of this subsection, an amount specified or implied shall include an amount specified or implied in a foreign currency.

(c) This subsection shall apply to shares in a company where any agreement, arrangement or understanding exists which could reasonably be considered to eliminate the risk that the person beneficially owning those shares—

(i) might, at or after a time specified in or implied by that agreement, arrangement or understanding, be unable to realise directly or indirectly in money or money's worth an amount so specified or implied, other than a distribution, in respect of those shares, or

(ii) might not receive an amount so specified or implied of distributions in respect of those shares.

(d) The reference in this subsection to the person beneficially owning shares shall be deemed to be a reference to both that person and any person connected with that person.

(e) Relief from income tax shall not be allowed under this Part in respect of the amount subscribed for any shares to which this subsection applies.

(15) This section shall apply only where the shares concerned are issued in the period commencing on the 6th day of April, 1984, and ending on the 5th day of April, 1999.