

Limitation on meaning of “distribution” in relation to certain payments made in respect of “foreign source” finance. CTA76 s84A(1) to (6), (9) and (10); FA84 s41; FA86 s54; FA87 s28(5)(b); FA89 s21(2)(a); FA97 s146(1) and Sch9 Ptl par10(2)(a) 134.—(1) (a) In this section—

“agricultural society” and “fishery society” have the meanings respectively assigned to them by section 443 (16);

“selling by wholesale” means selling goods of any class to a person who carries on a business of selling goods of that class or uses goods of that class for the purposes of a trade or undertaking carried on by the person;

“specified trade” means, subject to paragraphs (b) and (d) and to subsection (6), a trade which consists wholly or mainly of—

(i) the manufacture of goods, including activities which, if the borrower were to make a claim for relief in respect of the trade under Part 14, would be regarded for the purposes of that Part as the manufacture of goods, or

(ii) the rendering of services in the course of a service undertaking in respect of which an employment grant was made by the Industrial Development Authority under section 2 of the Industrial Development (No. 2) Act, 1981 .

(b) Where the borrower mentioned in subsection (5) is a 75 per cent subsidiary of—

(i) an agricultural society, or

(ii) a fishery society,

“specified trade”, in that subsection, means a trade of the borrower which consists wholly or mainly of either or both of—

(I) the manufacture of goods within the meaning of the definition of “specified trade” in paragraph (a), and

(II) the selling by wholesale of—

(A) where subparagraph (i) applies, agricultural products, or

(B) where subparagraph (ii) applies, fish.

(c) For the purposes of the definition of “specified trade” in paragraph (a) and of paragraph (b), a trade shall be regarded, as respects an accounting period, as consisting wholly or mainly of particular activities only if the total amount receivable by the borrower from sales made or, as the case may be, in

payment for services rendered in the course of those activities in the accounting period is not less than 75 per cent of the total amount receivable by the borrower from all sales made in the course of the trade in that period.

(d) A qualifying shipping trade ) shall not be regarded as a specified trade for the purposes of this section.

(2) This section shall apply only where the principal secured has been advanced by a company out of money subscribed for the share capital of the company and that share capital is beneficially owned directly or indirectly by a person or persons resident outside the State.

(3) Any interest or other distribution which—

(a) is paid out of assets of a company (in this section referred to as “the borrower”) to another company within the charge to corporation tax, and

(b) is so paid in respect of a security (in this section referred to as a “relevant security”) within subparagraph (ii), (iii)(I) or (v) of section 130 (2)(d),

shall not be a distribution for the purposes of the Corporation Tax Acts unless the application of this subsection is excluded by subsection (4) or (5).

(4) Subsection (3) shall not apply in a case where the consideration given by the borrower for the use of the principal secured represents more than a reasonable commercial return for the use of that principal; but, where this subsection applies, nothing in subparagraph (ii), (iii)(I) or (v) of section 130 (2)(d) shall operate so as to treat as a distribution for the purposes of the Corporation Tax Acts so much of the interest or other distribution as represents a reasonable commercial return for the use of that principal.

(5) Subsection (3) shall not apply to any interest paid by the borrower, in an accounting period of the borrower, to another company the ordinary trading activities of which include the lending of money, where—

(a) in that accounting period the borrower carries on in the State a specified trade, and

(b) the interest, if it were not a distribution, would be treated as a trading expense of that trade for that accounting period.

(6) (a) This subsection shall apply to any interest or other distribution which apart from this subsection would be a distribution for the purposes of the Corporation Tax Acts, other than any interest or other distribution which is paid by the borrower under an obligation entered into—

(i) before the 13th day of May, 1986, or

(ii) before the 1st day of September, 1986, in accordance with negotiations which were in progress between the borrower and a lender before the 13th day of May, 1986.

(b) Subsection (5) shall apply as respects any interest or other distribution to which this subsection applies as if paragraph (ii) of the definition of “specified trade” in subsection (1)(a) were deleted.

(c) For the purposes of paragraph (a)—

(i) an obligation shall be treated as having been entered into before a particular date only if before that date there was in existence a binding contract in writing under which that obligation arose, and

(ii) negotiations in accordance with which an obligation was entered into shall not be regarded as having been in progress before the 13th day of May, 1986, unless on or before that date preliminary commitments or agreements in relation to that obligation had been entered into between the lender referred to in that paragraph and the borrower.