

CHAPTER 2 Income tax and corporation tax: reliefs applicable to both

Relief for investment in films. FA87 s35(1) to (20); FA96 s31(1); FA97 s30 481.—(1) In this section—

“allowable investor company”, in relation to a qualifying company, means a company which is not connected with the qualifying company;

“authorised officer” means an officer of the Revenue Commissioners authorised by them in writing for the purposes of this section;

“film” means—

(a) as respects a film in respect of which the Minister did not receive before the 29th day of April, 1997, the application to enable the Minister to consider whether a certificate should be given under subsection (2)(a), a film of a kind which is included within the categories of films eligible for certification as set out in guidelines referred to in subsection (2), or

(b) as respects any other film, a film which is produced—

(i) on a commercial basis with a view to the realisation of profit, and

(ii) wholly or principally for exhibition to the public in cinemas or by means of television broadcasting,

but does not include a film made for exhibition as an advertising programme or as a commercial;

“the Minister” means the Minister for Arts, Heritage, Gaeltacht and the Islands;

“qualifying company” means a company which—

(a) is incorporated in the State,

(b) is resident in the State and not resident elsewhere,

(c) exists solely for the purposes of the production and distribution of only one qualifying film, and

(d) does not contain in its name registered under either or both the Companies Acts, 1963 to 1990, or the Registration of Business Names Act, 1963, the words “Ireland”, “Irish”, “Éireann”, “Éire” or “national”,

but paragraph (d) shall apply only as respects a film (being the film the company exists for the production and distribution of) in respect of which the Minister did not receive before the 29th day of April, 1997, the application to enable the Minister to consider whether a certificate should be given under subsection (2)(a);

“qualifying film” means a film in respect of which the Minister has given a certificate under subsection (2) which has not been revoked under that subsection;

“qualifying individual”, in relation to a qualifying company, means an individual who is not connected with the company;

“qualifying period”—

(a) in relation to an allowable investor company, means the period commencing on the 23rd day of January, 1996, and ending on the 22nd day of January, 1999, and

(b) in relation to a qualifying individual, means the period commencing on the 23rd day of January, 1996, and ending on the 5th day of April, 1999;

“relevant deduction” means a deduction of an amount equal to 80 per cent of a relevant investment;

“relevant investment” means a sum of money which is—

(a) paid in the qualifying period to a qualifying company in respect of shares in the company by an allowable investor company on its own behalf or by a qualifying individual on that individual's own behalf, and is paid by the allowable investor company or by the qualifying individual, as the case may be, directly to the qualifying company,

(b) paid by the allowable investor company or the qualifying individual, as the case may be, for the purposes of enabling the qualifying company to produce a film in respect of which, at the time such sum of money is paid, the Minister has given notice in writing to the qualifying company that the Minister is satisfied for the time being that an application in writing containing such information as may be specified in guidelines referred to in subsection (2) has been made to enable the Minister to consider whether a certificate should be given to that company under that subsection, and

(c) used by the qualifying company within 2 years of the receipt of that sum for those purposes, but does not include a sum of money paid to the qualifying company on terms which provide that it will be repaid, other than a provision for its repayment in the event of the Minister not giving a certificate under subsection (2), and a reference to the making of a relevant investment shall be construed as a reference to the payment of such a sum to a qualifying company.

2) (a) (i) Subject to subparagraph (ii), the Minister, on the making of an application by a qualifying company, may, in accordance with guidelines laid down by the Minister with the consent of the Minister for Finance, give a certificate to a qualifying company stating, in relation to a film to be produced by the company, that the film may be treated as a qualifying film for the purposes of this section.

(ii) In relation to a film in respect of which the Minister did not receive before the 29th day of April, 1997, the application to enable the Minister to consider whether a certificate should be given under this paragraph, nothing in this section shall be construed as obliging the Minister to give a certificate under this paragraph, and in any case where, in relation to a film, the principal photography has commenced,

the first animation drawings have commenced or the first model movement has commenced, as the case may be, before application is made by a qualifying company, the Minister shall not give a certificate under this paragraph.

(iii) An application under this section shall be in such form as the Minister may direct and shall contain such information as may be specified in the guidelines referred to in subparagraph (i).

(b) A certificate given by the Minister under paragraph (a) shall be subject to such conditions as the Minister may consider proper (having regard, in particular, to any contribution which the production of the film is expected to make to either or both the development of the film industry in the State and the promotion and expression of Irish culture) and specifies in the certificate, including—

(i) a condition that not less than—

(I) 75 per cent, or

(II) such lower percentage, not being less than 10 per cent, which in accordance with guidelines laid down under paragraph (a) the Minister specifies in the certificate,

of the work on the production of the film is carried out in the State,

(ii) subject to paragraph (c), a condition that the amount per cent of the total cost of production of the film which may be met by relevant investments shall not exceed the amount per cent (in paragraph (c) referred to as “the specified percentage”) specified in the certificate, and

(iii) a condition that the qualifying company shall, in respect of the qualifying film concerned, notify the Minister in writing of when the principal photography has commenced, the first animation drawings have commenced or the first model movement has commenced, as appropriate.

(c) (i) Subject to subparagraphs (ii) and (iii), the specified percentage shall not exceed—

(I) where the total cost of production of the film does not exceed £4,000,000, 60 per cent,

(II) where the total cost of production of the film exceeds £4,000,000 and does not exceed £5,000,000, the amount per cent (in this subparagraph referred to as “the allowable percentage”) where the amount of the allowable percentage is determined by the formula—

$$60 - E \frac{\text{£}100,000}{\text{£}5,000,000}$$

where E is the excess of the total cost of production of the film over £4,000,000, and

(III) where the total cost of production of the film exceeds £5,000,000, 50 per cent;

but, in any case to which clause (I), (II) or (III) relates, the total cost of production of the film which is met by relevant investments shall not exceed £7,500,000, and where the percentage of the work on the

production of the film carried out in the State (in this paragraph referred to as the “lower percentage”) is less than 50 per cent, this paragraph shall be construed as if the reference to 60 per cent, the reference to the allowable percentage and the reference to 50 per cent were a reference to the lower percentage.

(ii) (I) In relation to a film (other than an animation film) in respect of which the principal photography commences at any time during the months of October, November, December and January, and the production of the film continues to completion without unreasonable delay from that time, or

(II) in relation to a film in respect of which post production work is to be carried out wholly or mainly in the State,

the references in subparagraph (i) to—

(A) 60 per cent shall be construed as a reference to 66 per cent,

(B) 50 per cent shall be construed as a reference to 55 per cent, and

(C) £7,500,000 shall be construed as a reference to £8,250,000.

(iii) In relation to a film in respect of which not less than one-half of the amount of the total cost of production met by relevant investments has been met by relevant investments paid by allowable investor companies, the references in this paragraph (apart from this subparagraph) to—

(I) £7,500,000 shall be treated as a reference to £15,000,000 and

(II) £8,250,000 shall be treated as a reference to £16,500,000.

(d) The Minister may amend or revoke any condition (including a condition added by virtue of this paragraph) specified in the certificate, or add to such conditions, by giving notice in writing to the qualifying company concerned of the amendment, revocation or addition, and this section shall apply as if—

(i) a condition so amended or added by the notice was specified in the certificate, and

(ii) a condition so revoked was not specified in the certificate.

(e) Where a company fails to comply with any of the conditions to which a certificate issued to it under paragraph (a) is subject by virtue of paragraph (b) or (d)—

(i) that failure shall constitute the failure of an event to happen by reason of which relief is to be withdrawn under subsection (11), and

(ii) the Minister may, by notice in writing served by registered post on the company, revoke the certificate.

(3) Subject to this section, where in an accounting period an allowable investor company makes a

relevant investment, it shall, on making a claim in that behalf, be given a relevant deduction from its total profits for the accounting period; but, where the amount of the relevant deduction to which the allowable investor company is entitled under this section in an accounting period exceeds its profits for that accounting period, an amount equal to 125 per cent of the amount of that excess shall be carried forward to the succeeding accounting period and the amount so carried forward shall be treated for the purposes of this section as if it were a relevant investment made in that succeeding accounting period.

(4) (a) Subject to paragraph (b), where in any period of 12 months (in paragraph (b) referred to as a “12 month period”) ending on an anniversary of the 22nd day of January, 1996, the amount or the aggregate amount of the relevant investments made, or treated as made, by an allowable investor company, or by such company and all companies (which other companies are referred to in paragraph (b) as “connected companies”) which at any time in that period would be regarded as connected with such company, exceeds £8,000,000—

(i) no relief shall be given under this section in respect of the amount of the excess, and

(ii) where there is more than one relevant investment, the inspector or, on appeal, the Appeal Commissioners shall make such apportionment of the relief available as shall be just and reasonable to allocate to each relevant investment a due proportion of the relief available and, where necessary, to grant to each allowable investor company concerned an amount of relief proportionate to the amount of the relevant investment or the aggregate amount of the relevant investments made by it in the period.

(b) No relief shall be given under this section in respect of the amount or the aggregate amount of the relevant investments (in this paragraph referred to as “the total amount”) made by an allowable investor company and its connected companies—

(i) to the extent that the amount of the relevant investment, or the total amount made in any one qualifying company, exceeds £3,000,000, and

(ii) where in any 12 month period the total amount exceeds £3,000,000, to the extent that the excess comprises a relevant investment or relevant investments made in a qualifying company to enable the company to produce a film, the total cost of production of which exceeds £4,000,000.

(5) Subject to this section, where in any year of assessment a qualifying individual makes a relevant investment, the individual shall, on making a claim in that behalf, be given a relevant deduction from his or her total income for that year of assessment.

(6) A relevant deduction shall not be given under this section in respect of any relevant investment made by a qualifying individual in a qualifying company in any year of assessment unless the amount of that relevant investment or the total amount of the relevant investments made by the individual in the qualifying company in that year is £200 or more and, for the purposes of this section in the case of a qualifying individual who is married and is assessed to tax for a year of assessment in accordance with section 1017, any relevant investment made by the qualifying individual's spouse in the qualifying company in that year of assessment shall be deemed to have been made by the qualifying individual.

(7) A relevant deduction shall not be given to a qualifying individual under this section for a year of

assessment to the extent to which the amount of the relevant investment or the total amount of the relevant investments (whether or not made in the same qualifying company) made or treated as made by the individual in that year of assessment exceeds £25,000.

(8) Where for any year of assessment a greater relevant deduction would be given to a qualifying individual under this section but for either or both of the following reasons—

(a) an insufficiency of total income, or

(b) the operation of subsection (7),

then, 125 per cent of the relevant deduction which cannot be given to the individual under this section for either or both of those reasons shall be carried forward to the next year of assessment and shall be treated for the purposes of this section as a relevant investment made by the individual in that next year; but an amount shall not be carried forward to any year of assessment after the year 1998-99.

(9) To the extent that an amount once carried forward to a year of assessment under subsection (8) (and treated as a relevant investment made by a qualifying individual in that year of assessment) gives rise to a relevant deduction which is not deducted from the qualifying individual's total income for that year of assessment, the amount shall to that extent be carried forward again to the next year of assessment (and treated as a relevant investment made by the individual in that next year), and so on for succeeding years of assessment; but an amount shall not be carried forward to any year of assessment after the year 1998-99.

(10) A relevant deduction under this section shall be given to a qualifying individual for any year of assessment as follows—

(a) in the first instance, in respect of an amount of relevant investment carried forward from an earlier year of assessment in accordance with subsection (8) or (9), and, in respect of such an amount so carried forward, for an earlier year of assessment in priority to a later year of assessment, and

(b) only thereafter, in respect of any other amount of relevant investment in respect of which a relevant deduction is to be given in that year of assessment.

(11) (a) A claim to relief under this section may be allowed at any time after the time specified in paragraph (b) in respect of the payment of a sum to a qualifying company, which, if it is used, within 2 years of its being paid, by the qualifying company for the production of a qualifying film, will be a relevant investment, if all the conditions for relief are or will be satisfied; but the relief shall be withdrawn if, by reason of the happening of any subsequent event including the revocation by the Minister of a certificate under subsection (2) or the failure of an event to happen which at the time the relief was given was expected to happen, the company or the individual, as the case may be, making the claim was not entitled to the relief allowed.

(b) The time referred to in paragraph (a) is the time when all of the following events have occurred—

(i) the payment in respect of which relief is claimed has been made, and

(ii) in relation to the qualifying film the principal photography has commenced, the first animation drawings have commenced or the first model movement has commenced, as appropriate.

(12) A claim for relief in respect of a relevant investment in a company shall not be allowed unless it is accompanied by a certificate issued by the company in such form as the Revenue Commissioners may direct and certifying that the conditions for the relief, in so far as they apply to the company and the qualifying film, are or will be satisfied in relation to that investment.

(13) Before issuing a certificate for the purposes of subsection (12), a company shall furnish the authorised officer with—

(a) a statement to the effect that it satisfies or will satisfy the conditions for the relief in so far as they apply in relation to the company and a film,

(b) a copy of any notification required to be given to the Minister under subsection (2)(b)(iii),

(c) a copy of the certificate, including a copy of any notice given by the Minister amending, revoking or adding a condition to that certificate, under subsection (2) in respect of the film, and

(d) such other information as the Revenue Commissioners may reasonably require.

(14) A certificate to which subsection (12) relates shall not be issued without the authority of the authorised officer.

(15) Any statement under subsection (13) shall—

(a) contain such information as the Revenue Commissioners may reasonably require,

(b) be in such form as the Revenue Commissioners may direct, and

(c) contain a declaration that it is correct to the best of the company's knowledge and belief.

(16) Where a company has issued a certificate for the purposes of subsection (12) or furnished a statement under subsection (13) and either—

(a) the certificate or statement was made fraudulently or negligently, or

(b) the certificate was issued in contravention of subsection (14),

then—

(i) the company shall be liable to a penalty not exceeding £500 or, in the case of fraud, not exceeding £1,000, and such penalty may, without prejudice to any other method of recovery, be proceeded for and recovered summarily in the like manner as in summary proceedings for the recovery of any fine or penalty under any Act relating to the excise, and

(ii) no relief shall be given under this section and, if any such relief has been given, it shall be withdrawn.

(17) For the purpose of regulations made under section 986, no regard shall be had to the relief unless a claim for it has been duly made and admitted.

(18) An allowable investor company or a qualifying individual shall not be entitled to relief in respect of a relevant investment unless the relevant investment—

(a) has been made 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,

(b) has been or will be used in the production of a qualifying film, and

(c) is made at the risk of the allowable investor company or the qualifying individual, as the case may be, and—

(i) in a case where it is made by an allowable investor company, neither the company nor any person who would be regarded as connected with the company, or

(ii) in a case where it is made by a qualifying individual, neither the individual nor any person who would be regarded as connected with the individual,

is entitled to receive any payment in money or money's worth or other benefit directly or indirectly borne by or attributable to the qualifying company, other than a payment made on an arm's length basis for goods or services supplied or a payment out of the proceeds of exploiting the film to which the allowable investor company or the qualifying individual, as the case may be, is entitled under the terms subject to which the relevant investment is made.

(19) Where any relief has been given under this section which is subsequently found not to have been due or is to be withdrawn by virtue of subsection (11) or (16), that relief shall be withdrawn by making an assessment to corporation tax or income tax, as the case may be, under Case IV of Schedule D for the accounting period or accounting periods, or the year of assessment or years of assessment, as the case may be, in which relief was given and, notwithstanding anything in the Tax Acts, such an assessment may be made at any time.

(20) (a) In this subsection, "new ordinary shares" means new ordinary shares forming part of the ordinary share capital of a qualifying company which, throughout the period of one year commencing on the date such shares are issued, carry no present or future preferential right to dividends, or to a company's assets on its winding up, and no present or future preferential right to be redeemed.

(b) Subject to paragraph (d), where an allowable investor company is entitled to relief under this section in respect of any sum or any part of a sum, or would be so entitled on making due claim, as a relevant deduction from its total profits for any accounting period, it shall not be entitled to any relief for that sum or that part of a sum, in computing its income or profits, or as a deduction from its income or

profits, for any accounting period under any other provision of the Corporation Tax Acts or the Capital Gains Tax Acts.

(c) Subject to paragraph (d), where a qualifying individual is entitled to relief under this section in respect of any sum or any part of a sum, or would be so entitled on making due claim, as a relevant deduction from his or her total income for any year of assessment—

(i) the individual shall not be entitled to any relief for that sum or that part of a sum in computing his or her total income, or as a deduction from his or her total income, for any year of assessment under any other provision of the Income Tax Acts, and

(ii) so much of that sum or that part of a sum as is equal to the amount of the relevant deduction given in relation thereto shall be treated as a sum which by virtue of section 554, is to be excluded from the sums allowable as a deduction in the computation of gains and losses for the purposes of the Capital Gains Tax Acts.

(d) Where an allowable investor company or a qualifying individual has made a relevant investment by means of a subscription for new ordinary shares of a qualifying company and none of those shares is disposed of by the allowable investor company or the qualifying individual, as the case may be, within one year of their acquisition by that company or that individual, as the case may be, then, the sums allowable as deductions from the consideration in the computation for the purpose of capital gains tax of the gain or loss accruing to the company or the individual, as the case may be, on the disposal of those shares shall be determined without regard to any relief under this section which the company or the individual, as the case may be, has obtained, or would be entitled on due claim to obtain, except that where those sums exceed the consideration they shall be reduced by an amount equal to the lesser of—

(i) the amount of the relevant deduction allowed to the allowable investor company or the qualifying individual, as the case may be, under this section in respect of the subscription for those shares, and

(ii) the amount of the excess;

but, if the disposal of shares is by a qualifying individual and the disposal is within section 1028(5), this paragraph shall not apply.

(21) This section shall apply subject to paragraph 22 of Schedule 32, which contains certain transitional provisions in relation to relief under this section.