

Special investment schemes. FA93 s13; FA94 s34(a); FA96 s36 737.—(1) (a) In this section—

“inspector”, “ordinary shares”, and “qualifying shares” have the same meanings respectively as in section 723;

“authorised unit trust scheme” means a unit trust scheme which is or is deemed to be an authorised unit trust scheme ) and which has not had its authorisation under that Act revoked;

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

“special investment scheme” means an authorised unit trust scheme in respect of which the conditions specified in subsection (2) are satisfied;

“special investment units” means units sold to an individual on or after the 1st day of February, 1993, by the management company or trustee under an authorised unit trust scheme in respect of which—

(a) the conditions specified in subsection (3) are satisfied, and

(b) a declaration of the kind specified in subsection (4) has been made to the management company or trustee;

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

“units”, in relation to an authorised unit trust scheme, means any units (whether described as units or otherwise) into which are divided the beneficial interests in the assets subject to any trust created under the scheme.

(b) A reference in this section to the management company or trustee under an authorised unit trust scheme shall be construed as a reference to the person in whom are vested the powers of management relating to property for the time being subject to any trust created pursuant to the scheme or, as the case may be, to the person in whom such property is or may be vested in accordance with the terms of the trust.

(2) (a) The conditions referred to in the definition of “special investment scheme” are as follows:

(i) the beneficial interests in the assets subject to any trust created under the authorised unit trust scheme concerned shall be divided into special investment units;

(ii) the aggregate of the consideration given for shares which are at any time before the 1st day of February, 1994, assets subject to any trust created under the scheme 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 which are at that time subject to any such trust;

(iii) 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 subject to any trust created under the scheme 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 which are at that time subject to any such trust;

(iv) 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 subject to any trust created under the scheme 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 which are at that time subject to any such trust;

(v) the aggregate of the consideration given for shares which are at any time on or after the 1st day of February, 1996, assets subject to any trust created under the scheme 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 which are at that time subject to any such trust.

(b) For the purposes of subparagraphs (ii) to (v) of paragraph (a), the amount of the consideration given for assets subject to any trust created under the scheme shall be determined in accordance with sections 547 and 580.

(3) (a) The conditions referred to in the definition of “special investment units” are as follows:

(i) the special investment units shall be so designated in the trusts created under the authorised unit trust scheme concerned;

(ii) the aggregate of payments made on or before any day to the management company or trustee under the scheme by or on behalf of an individual in respect of special investment units owned, whether jointly or otherwise, by the individual on that day shall not exceed £50,000;

(iii) the management company or trustee under the scheme shall ensure that the aggregate of the market value of special investment units owned, whether jointly or otherwise, by any individual does not exceed £50,000 at any time on or after the fifth anniversary of the date on which the first payment was made by or on behalf of that individual in respect of those units;

(iv) special investment units shall not be sold to or owned by an individual who is not of full age;

(v) special investment units shall only be sold to an individual—

(I) who shall be beneficially entitled to, and

(II) to whom there shall be paid,

all amounts payable in respect of those units by the management company or trustee under the scheme;

(vi) except in the case of special investment units sold to and owned jointly only by a couple married to each other, units shall not be jointly owned;

(vii) except in the case of special investment units bought by and owned jointly only by a couple married to each other, an individual who owns such units of an authorised unit trust scheme shall not buy or own such units of another authorised unit trust scheme;

(viii) where a couple married to each other buy and jointly own special investment units of an authorised unit trust scheme, they shall not buy or own such units in any other such scheme either individually or jointly, other than units which they buy and jointly own in one other such scheme.

(b) For the purposes of subparagraphs (ii) to (iv) and (vi) to (viii) of paragraph (a), references to ownership of special investment units shall be construed as references to beneficial ownership of the units.

(c) For the purposes of subparagraphs (ii) and (iii) of paragraph (a), a disposal of special investment units of an authorised unit trust scheme acquired by an individual at different times shall be assumed to be a disposal of units acquired later, rather than of units acquired earlier, by the individual.

(4) The declaration referred to in the definition of “special investment units” is a declaration in writing to the management company or trustee under an authorised unit trust scheme which—

(a) (i) is made by the individual (in this section referred to as “the declarer”) to whom any amounts are payable by the management company or trustee in respect of units in respect of which the declaration is made, and

(ii) is signed by the declarer,

(b) is made in such form as may be prescribed or authorised by the Revenue Commissioners,

(c) declares that at the time when the declaration is made the conditions specified in subparagraphs (iv) to (viii) of subsection (3)(a) are satisfied in relation to the units in respect of which the declaration is made,

(d) contains the full name and address of the individual beneficially entitled to any amounts payable in respect of the units in respect of which the declaration is made,

(e) contains an undertaking by the declarer that, if any of the conditions referred to in subparagraphs (iv) to (viii) of subsection (3)(a) ceases to be satisfied in respect of the units in respect of which the declaration is made, the declarer will notify the management company or trustee accordingly, and

(f) contains such other information as the Revenue Commissioners may reasonably require for the purposes of this section.

(5) (a) The management company or trustee under an authorised unit trust scheme shall—

(i) keep and retain for not less than the longer of the following periods—

(I) a period of 6 years, and

(II) a period which, in relation to the units in respect of which the declaration is made, ends 3 years after the earliest date on which all of those units stand cancelled, redeemed or bought by the management company or trustee, and

(ii) on being so required by notice given to it in writing by an inspector, make available to the inspector within the time specified in the notice,

all declarations of the kind specified in subsection (4) which have been made to it.

(b) The inspector may examine and take copies of or of extracts from a declaration made available to him or her under paragraph (a).

(6) (a) Notwithstanding section 734, a special investment scheme shall not be a collective investment undertaking for the purposes of that section and Schedule 18; but a special investment scheme shall continue to be treated as a collective investment undertaking ) for the purposes of section 206 (a) of the Finance Act, 1992 .

(b) Notwithstanding any other provision of the Tax Acts or the Capital Gains Tax Acts but subject to paragraphs (c) and (d)—

(i) income tax in respect of income arising to a special investment scheme shall be chargeable at the standard rate, and such income shall not be charged to an additional duty of income tax under section 805, and

(ii) capital gains tax in respect of chargeable gains accruing to a special investment scheme shall be chargeable at the rate specified in section 28 (3).

(c) Any income tax or capital gains tax chargeable in accordance with paragraph (b) shall be reduced so that the amount of such tax, before it is reduced by any credit, relief or other deduction under the Tax Acts or the Capital Gains Tax Acts apart from this section, is 10 per cent of income arising or chargeable gains accruing, as the case may be, to the scheme.

(d) Only so much of income arising or gains accruing to the scheme shall be chargeable to income tax or capital gains tax, as the case may be, in accordance with paragraph (b) as is or is to be—

(i) paid to, or

(ii) accumulated or invested for the benefit of,

holders of special investment units or as would be so paid, accumulated or invested if any gains accruing to the scheme by virtue of subsection (8) were gains on an actual disposal of the assets concerned.

(7) (a) Notwithstanding section 136 (5), a distribution made by a company resident in the State in respect of shares which are subject to any trust created in pursuance of a special investment scheme shall be treated for the purposes of the Tax Acts as income in respect of which the management company or trustee under the scheme is entitled to a tax credit, and no other person shall be treated for the purposes of section 136 as receiving that distribution.

(b) Where a management company or trustee under a special investment scheme is entitled to a tax credit in respect of a distribution made by a company resident in the State, the credit or part of it shall be set against—

(i) the income tax, as reduced by virtue of subsection (6)(c), chargeable in respect of income arising to, or

(ii) the capital gains tax, as so reduced, chargeable in respect of chargeable gains accruing to,

the special investment scheme for the year of assessment in which the distribution is made and, where the credit exceeds the aggregate of that income tax and capital gains tax, the excess shall be paid to the management company or trustee under the scheme.

(c) Notwithstanding Chapter 4 of Part 8, that Chapter shall apply to a deposit (within the meaning of that Chapter) for the time being subject to any trust created pursuant to a special investment scheme as if such a deposit were not a relevant deposit (within the meaning of that Chapter).

(8) (a) Notwithstanding the Capital Gains Tax Acts, for the purposes of computing chargeable gains arising to a special investment scheme—

(i) each asset which on the 5th day of April is subject to any trust created pursuant to the scheme

shall be deemed to have been disposed of and immediately reacquired by the management company or trustee under the scheme on that day at the asset's market value on that day,

(ii) section 556 shall not apply,

(iii) section 607 shall not apply,

(iv) without prejudice to the treatment of losses on such shares as allowable losses, gains accruing on the disposal or deemed disposal of eligible shares ) in a qualifying company (within the meaning of that Part) shall not be chargeable gains, and

(v) as respects section 581—

(I) subsections (1) and (2) of that section, and

(II) subsection (3) of that section, in so far as a chargeable gain is not thereby disregarded for the purposes of that subsection,

shall apply as if subparagraphs (i) and (iii) had not been enacted.

(b) Where in a year of assessment the management company or trustee under a special investment scheme incurs allowable losses on disposals or deemed disposals of assets subject to any trust created pursuant to the scheme, the amount, if any, by which the aggregate of such allowable losses exceeds the aggregate of chargeable gains on such disposals in the year of assessment shall be—

(i) disregarded for the purposes of section 31,

(ii) treated as reducing the income chargeable to income tax arising to the scheme in that year of assessment, and

(iii) to the extent that it is not treated as reducing income arising to the scheme in that year of assessment, treated for the purposes of the Capital Gains Tax Acts and this paragraph as an allowable loss incurred in the next year of assessment on a disposal of an asset subject to a trust created pursuant to the scheme.

(c) (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 management company or the trustee was the first buyer and the management company or the trustee carried on a trade to which section 749(1) applies but, in 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) Where in a year of assessment (in this paragraph referred to as “the first year of assessment”) any securities which are assets subject to any trust created pursuant to a special investment scheme are disposed of and in the following year of assessment interest becoming payable in respect of the securities is receivable by the special investment scheme, then, for the purposes of computing the chargeable gains for the first year of assessment, the price paid by the management company or the trustee 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.

(9) (a) In this subsection, “eligible shares” means eligible shares within the meaning of Part 16 in a qualifying company within the meaning of that Part.

(b) Distributions received by the management company or trustee under a special investment scheme in respect of eligible shares which are subject to any trust created in pursuance of the scheme shall not be chargeable to income tax; but, notwithstanding subsection (7) or section 136, the tax credit in respect of a distribution to which this paragraph applies shall be disregarded for the purposes of the Tax Acts and the Capital Gains Tax Acts.

(c) Notwithstanding section 508, the Revenue Commissioners shall not designate a special investment scheme for the purposes of Part 16.

(10) (a) Any payment made to a holder of special investment units by the management company or trustee under the special investment scheme concerned by reason of rights conferred on the holder as a result of holding such units shall not be reckoned in computing total income for the purposes of the Income Tax Acts.

(b) Section 732 shall not apply to a special investment scheme or the disposal of special investment units.

(c) No chargeable gain shall accrue on the disposal of, or of an interest in, special investment units.

(d) Notwithstanding any other provision of the Income Tax Acts or the Capital Gains Tax Acts, the holder of special investment units of a special investment scheme shall not be entitled to any credit for or payment of any income tax or capital gains tax paid in respect of income arising to, or capital gains accruing to, the scheme.