

## CHAPTER 2 Special investment policies

Special investment policies. CTA76 s36A(1) to (6) and (8); FA93 s11(f); FA94 s33; FA96 s49 723.—(1) In this section—

“excluded shares” means—

(a) shares in an investment company within the meaning of Part XIII of the Companies Act, 1990 ,

(b) shares in an undertaking for collective investment in transferable securities within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 ), or

(c) shares in a company, being shares the market value of which may be expected to approximate at all times to the market value of the proportion of the assets of the company which they represent;

“inspector”, in relation to any matter, means an inspector of taxes appointed under section 852, and includes such other officers as the Revenue Commissioners shall appoint in that behalf;

“mortality cover” means any amount payable under a policy of life assurance in the event of the death of a person specified in the terms of that policy;

“ordinary shares” means shares forming part of a company's ordinary share capital;

“qualifying shares” means ordinary shares—

(a) in a company resident in the State, or

(b) (i) listed in the official list of the Irish Stock Exchange, or

(ii) dealt in on the smaller companies market, or the unlisted securities market, of the Irish Stock Exchange,

other than excluded shares;

“special investment business” means so much of the life business of an assurance company as is connected with special investment policies;

“special investment fund” means a fund in respect of which the conditions specified in subsection (2) are satisfied;

“special investment policy” means a policy of life assurance issued by an assurance company to an individual on or after the 1st day of February, 1993, 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 assurance company;

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

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

(a) the fund shall be owned by an assurance company;

(b) the fund shall be kept separately from its other funds, if any, by the assurance company;

(c) the fund shall represent only the liabilities of the assurance company in respect of its special investment business, and accordingly there shall not be any arrangements whereby any asset of the fund is connected directly or indirectly with any business of the company other than its special investment business;

(d) the aggregate of the consideration given for shares which are at any time before the 1st day of February, 1994, assets of the fund 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 assets of the fund at that time;

(e) 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 of the fund 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 assets of the fund at that time;

(f) 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 of the fund 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 assets of the fund at that time;

(g) the aggregate of the consideration given for shares which are at any time on or after the 1st day of February, 1996, assets of the fund 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 assets of the fund at that time,

and for the purposes of paragraphs (d) to (g) the amount of the consideration given for assets of the fund shall be determined in accordance with sections 547, 580 and 724.

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

(a) the policy of life assurance concerned shall be designated by the assurance company concerned as a special investment policy;

(b) any payments received by the company in respect of the policy shall not, or shall not in the aggregate if there is more than one such payment, exceed £50,000;

(c) the company shall ensure that its liability in respect of the policy does not exceed £50,000 at any time on or after the fifth anniversary of the date on which the first payment was received by it in respect of the policy;

(d) the policy shall not be issued to or owned by an individual who is not of full age;

(e) the policy shall be issued to an individual—

(i) who is beneficially entitled to, and

(ii) to whom there shall be paid,

all amounts, other than mortality cover, payable under the policy by the company;

(f) except in the case of a policy issued to and owned jointly only by a couple married to each other, the policy shall not be a joint policy;

(g) unless the policy is issued to and owned jointly only by a couple married to each other, the policy shall be the only such policy owned by the individual;

(h) if the policy is to be issued to and owned jointly only by a couple married to each other, it shall be the only such policy, or one of 2 only such policies, owned only by them;

and for the purposes of paragraphs (d) to (h) references to ownership of a policy shall be construed as references to beneficial ownership of the policy.

(4) The declaration referred to in paragraph (b) of the definition of “special investment policy” shall be a declaration in writing to an assurance company which—

(a) (i) is made by the individual (in this section referred to as “the declarer”) to whom any amounts, other than mortality cover, are payable by the assurance company in respect of the policy 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 referred to in paragraphs (d) to (h) of subsection (3) are satisfied in relation to the policy in respect of which the declaration is made,

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

(e) contains an undertaking by the declarer that, if any of the conditions specified in paragraphs (d) to (h) of subsection (3) cease to be satisfied in respect of the policy in respect of which the declaration is made, the declarer will notify the assurance company accordingly, and

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

(5) (a) An assurance company 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 policy in respect of which the declaration is made, ends not earlier than 3 years after the date on which the company ceases to have any liability in respect of the policy, 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 the company.

(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) The corporation tax chargeable on any profits on which corporation tax falls finally to be borne which are attributable to the special investment fund of an assurance company shall be reduced, for the purposes of the Tax Acts other than section 707 (4), so that, before it is reduced by any credit, relief or

other deduction under the Tax Acts apart from this section, it is 10 per cent of those profits; but, in computing profits for the purposes of this subsection, section 78 (2) shall apply as if the rate per cent of capital gains tax specified in section 28 (3) were the rate per cent of corporation tax specified in section 21 (1)(b).

(7) For the purposes of computing income arising from, or chargeable gains accruing from the disposal of, assets of the special investment fund of an assurance company—

(a) each asset of the fund on the day on which an accounting period of the company ends shall be deemed to have been disposed of and immediately reacquired at the asset's market value on that day,

(b) 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,

(c) section 712 shall not apply to distributions in respect of the shares mentioned in paragraph (b), and

(d) section 726 shall not apply.