

Tax relief for certain branch profits. FA95 s29 847.—(1) (a) In this section—

“investment plan” means a plan of a company resident in the State—

(i) which involves the investment by the company or by a company associated with it of substantial permanent capital in the State for the purposes of the creation before a date specified in the plan of substantial new employment in the State in trading operations carried on or to be carried on in the State by the company or the company associated with it, and

(ii) which has been submitted before the commencement of its implementation to the Minister by the company for the purpose of enabling it to obtain relief under this section;

“the Minister” means the Minister for Finance;

“qualified company” means a company to which the Minister, following consultation with the Minister for Enterprise and Employment, has given a certificate, which certificate has not been revoked, under subsection (2);

“qualified foreign trading activities” means trading activities carried on by a qualified company through a branch or agency outside the State in a territory specified in the certificate given under subsection (2) to the company by the Minister following consultation with the Minister for Enterprise' Trade and Employment.

(b) For the purposes of this section—

(i) a company shall be associated with another company where one of the companies is a 75 per cent subsidiary of the other company or both companies are 75 per cent subsidiaries of a third company; but, in determining whether one company is a 75 per cent subsidiary of another company, the other company shall be treated as not being the owner of—

(I) any share capital which it owns directly in a company if a profit on the sale of the shares would be treated as a trading receipt of its trade, or

(II) any share capital which it owns indirectly and which is owned directly by a company for which a profit on the sale of the shares would be a trading receipt,

(ii) sections 412 to 418 shall apply for the purposes of this paragraph as they would apply for the purposes of Chapter 5 of Part 12 if section 411 (1) (c) were deleted,

(iii) where a trade carried on by a qualified company consists partly of qualified foreign trading activities and partly of other trading activities, the company shall be treated as if it were carrying on distinct trades consisting of such qualified foreign trading activities and of such other trading activities,

(iv) there shall be attributed to each trade carried on, or treated under subparagraph (iii) as carried on, such profits or gains or losses as might have been expected to be made if each trade had been carried on under the same or similar conditions by a person independent of, and dealing at arm's length with, the person carrying on the other trade, and

(v) there shall be made all necessary apportionments as are just and reasonable for the purposes of computing—

(I) profits or gains or losses arising from, and

(II) the amount of any charges on income, expenses of management or other amount which can be deducted from or set off against or treated as reducing profits of more than one description as is incurred for the purposes of,

a trade carried on, or treated under subparagraph (iii) as carried on, by a qualified company.

(2) Where a plan has been duly submitted by a company resident in the State and the Minister, following consultation with the Minister for Enterprise, Trade and Employment, is satisfied that—

(a) the plan is an investment plan,

(b) the company, or a company associated with it, will, before a date specified in the plan and approved by the Minister, make the substantial permanent capital investment in the State under the investment plan for the purposes of the creation of the substantial new employment in the State,

(c) the creation of substantial new employment in the State under the investment plan will be achieved, and

(d) the maintenance of the employment so created in trading operations in the State will be dependent on the carrying on by the company of qualified foreign trading activities,

then, the Minister may give a certificate certifying that the company is a qualified company with effect from a date specified in the certificate.

(3) (a) The Minister shall draw up guidelines for determining whether for the purposes of subsection (2) a company and companies associated with it will create substantial new employment and will make a substantial permanent capital investment in the State.

(b) Without prejudice to the generality of paragraph (a), guidelines under that paragraph may—

(i) include a requirement for specified levels of—

(I) employment in the State, and

(II) permanent capital investment in the State,

and

(ii) specify such criteria for the purposes of this subsection as the Minister considers appropriate.

(4) A certificate issued under subsection (2) may be given subject to such conditions as the Minister, following consultation with the Minister for Enterprise, Trade and Employment, considers proper and specifies in the certificate.

(5) Where in the case of a company in relation to which a certificate under subsection (2) has been given the Minister, following consultation with the Minister for Enterprise, Trade and Employment, forms the opinion that such certificate ought to be revoked because any condition subject to which the certificate was given has not been complied with, the Minister may by notice in writing served by registered post on the company revoke the certificate with effect from such date as may be specified in the notice.

(6) Notwithstanding any other provision of the Corporation Tax Acts—

(a) profits or gains or losses arising from the carrying on of qualified foreign trading activities shall be disregarded for the purposes of those Acts, and

(b) no amount of any charges on income, expenses of management or other amount which apart from this paragraph may be deducted from or set off against or treated as reducing profits of more than one description, shall be so deducted, set off or treated, as is incurred for the purposes of a trade carried on, or treated under subsection (1) (b) (iii) as carried on, by a qualified company which consists of qualified foreign trading activities.

(7) A gain shall not be a chargeable gain for the purposes of the Capital Gains Tax Acts if it accrues to a qualified company on the disposal of an asset, other than an asset specified in paragraphs (a) to (d) of section 980 (2), used wholly and exclusively for the purposes of a trade carried on, or treated under subsection (1) (b) (iii) as carried on, by a qualified company which consists of qualified foreign trading activities.

(8) An inspector may by notice in writing require a qualified company to furnish him or her with such information or particulars as may be necessary for the purposes of giving relief under this section.