

Qualifying trades. FA84 s16(1) to (3); FA87 s11; FA88 s7; FA89 s9(c)(i); FA90 s10(c); FA91 s15(1)(c)(ii) and (iii); FA93 s25(g)(i); FA94 s16(1)(c); FA95 s17(1)(f); FA96 s23; FA97 s9(c) 496.—(1) A trade shall be a qualifying trade if it complies with the requirements of this section.

(2) The trade shall throughout the relevant period—

(a) consist wholly or mainly of one or more of the following trading operations (in this Part referred to as “qualifying trading operations”)—

(i) the manufacture of goods within the meaning of Part 14; but—

(I) those trading operations or activities included in the definition, or regarded as the manufacture in the State, of “goods” for the purpose of Part 14 by virtue of subsections (3), (11), (12), (16), (17) and (19) of section 443 and of section 446 shall not, subject to the following provisions of this paragraph, be regarded as qualifying trading operations for the purposes of this Part, and

(II) the production of a film ) shall not be regarded as qualifying trading operations for the purposes of this Part,

(ii) the rendering of services ) in the course of a service industry ) in respect of which—

(I) (A) a grant towards the employment of persons was made by Forbairt or the Industrial Development Agency (Ireland) under section 12 (2) of the Industrial Development Act, 1993 , or

(B) shares in the qualifying company concerned were purchased or taken by Forbairt or the Industrial Development Agency (Ireland) in accordance with section 31 of the Industrial Development Act, 1986 ,

(II) a grant under section 3, or financial assistance under section 4 of the Shannon Free Airport Development Company Limited (Amendment) Act, 1970 , was made available by the Shannon Free Airport Development Company Limited, or

(III) financial assistance was made available by Údarás na Gaeltachta under section 10 of the Údarás na Gaeltachta Act, 1979 ,

(iii) in respect of a relevant investment, the rendering of services referred to in subparagraph (ii) in respect of which an employment grant would have been made or a grant or financial assistance would have been made available, as the case may be, by an industrial development agency under one of the provisions referred to in that subparagraph only for the fact that the industrial development agency concerned was or is precluded from making such an employment grant or making available such a grant or financial assistance, as the case may be, by reason of the fact that a grant or financial assistance had already been made by some other person,

(iv) in respect of—

(I) a relevant investment, or

(II) a subscription for eligible shares, other than such a subscription consisting of a relevant investment, made on or before the 5th day of April, 1998, and in respect of which a certificate for the purposes of this Part has been issued in accordance with subsection (5),

and notwithstanding subparagraph (ii), the rendering of relevant trading operations ) carried on for the purposes of or in connection with trading operations on an exchange facility established in the Custom House Docks Area ),

(v) in respect of a relevant investment, the rendering of services referred to in subparagraph (ii) in respect of which an industrial development agency or, as respects a relevant investment made on or after the 10th day of May, 1997, a County Enterprise Board ) has provided financial support of not less than £2,000 towards the undertaking of a feasibility study by a person approved of by the agency or the County Enterprise Board into the potential commercial viability of the services to be rendered,

(vi) research and development activities within the meaning of subsection (6),

(vii) the cultivation of horticultural produce within the meaning of subsection (7),

(viii) the cultivation of plants referred to in section 443 (3),

(ix) the construction and the leasing of an advance factory building,

(x) the research and development or other similar activity undertaken with a view to the carrying on of trading operations referred to in subparagraphs (i), (ii) and (viii),

(xi) the cultivation of mushrooms in the State,

(xii) the production, publication, marketing and promotion of a qualifying recording, or qualifying recordings, within the meaning of subsection (8),

(xiii) the operation of one or more tourist traffic undertakings within the meaning of subsection (9),  
and

(xiv) the sales of export goods by a Special Trading House within the meaning of section 443 (12),

and

(b) where the trade consists wholly or partly of the manufacture of goods referred to in paragraph (a)(i), be a trade in respect of which the company which carries it on has claimed and is entitled, or but for an insufficiency of profits would have claimed and been entitled, to relief from corporation tax under Part 14.

(3) Notwithstanding subsection (2), a trade which during the relevant period consists partly of

qualifying trading operations and partly of other trading operations shall be regarded for the purposes of that subsection as a trade which consists wholly or mainly of qualifying trading operations only if the total amount receivable in the relevant period from sales made and services rendered in the course of qualifying trading operations is not less than 75 per cent of the total amount receivable by the company from all sales made and services rendered in the course of the trade in the relevant period.

(4) (a) In this subsection—

“financial activities” means the provision of, and all matters relating to the provision of, financing or refinancing facilities by any means which involves, or has an effect equivalent to, the extension of credit;

“financing or refinancing facilities” includes—

(i) loans, mortgages, leasing, lease rental and hire-purchase, and all similar arrangements,

(ii) equity investment,

(iii) the factoring of debts and the discounting of bills, invoices and promissory notes, and all similar instruments,

(iv) the underwriting of debt instruments and all other kinds of financial securities, and

(v) the purchase or sale of financial assets;

“financial assets” includes shares, gilts, bonds, foreign currencies and all kinds of futures, options and currency and interest rate swaps, and similar instruments, including commodity futures and commodity options, invoices and all types of receivables, obligations evidencing debt (including loans and deposits), leases and loan and lease portfolios, bills of exchange, acceptance credits and all other documents of title relating to the movement of goods, commercial paper, promissory notes and all other kinds of negotiable or transferable instruments.

(b) For the purposes of this section—

(I) the leasing of machinery or plant,

(II) the leasing of land or buildings (other than the leasing of an advance factory building), or

(III) the carrying on of financial activities (other than such financial activities as are included in the activities referred to in subsection (2)(a)(iv)), shall not be regarded as qualifying trading operations.

(5) (a) In this subsection, “certification committee” means the committee consisting of a chairperson and 4 other members who from time to time may be appointed by the Minister for Finance for the purposes of this section.

(b) Subject to paragraph (c), the certification committee may, subject to such conditions as the committee considers proper and specifies in a certificate under this subsection, including a condition as to the maximum amount of money which may be raised by the company under this Part, issue a certificate for the purposes of this Part to a company which carries on or intends to carry on qualifying trading operations referred to in subsection (2)(a)(iv) and in respect of which money is raised or intended to be raised by the company under this Part by virtue of subsection (2)(a)(iv)(II), where—

(i) on the basis of such information as is supplied to the committee by the company or which the committee may reasonably request the company to furnish to it, and

(ii) such guidelines for the purpose as may be agreed from time to time between the committee and the Minister for Finance,

the committee is satisfied that—

(I) the qualifying trading operations carried on or to be carried on by the company will contribute to the development of the exchange facility on which those operations will be carried on, and

(II) the money raised or to be raised by the company under this Part has the potential to maintain or create a reasonable level of sustainable employment.

(c) The certification committee shall not give a certificate under this subsection to a company—

(i) after the 5th day of April, 1998, and

(ii) to the extent that the aggregate of all subscriptions made or to be made for eligible shares arising out of the issue of such certificates exceeds £2,000,000.

(6) (a) For the purposes of subsection (2)(a)(vi), “research and development activities” means systematic, investigative or experimental activities which—

(i) are carried on wholly or mainly in the State,

(ii) involve innovation or technical risk, and

(iii) are carried on for the purpose of—

(I) acquiring new knowledge with a view to that knowledge having a specific commercial application or

(II) creating new or improved materials, products, devices, processes or services,

and other activities that are carried on wholly or mainly in the State for a purpose directly related to the carrying on of activities of the kind referred to in subparagraph (iii).

(b) Notwithstanding paragraph (a), activities that are carried on by means of—

(i) market research, market testing, market development, sales promotion or consumer surveys,

(ii) quality control,

(iii) prospecting, exploring or drilling for minerals, petroleum or natural gas for the purpose of determining the size or quality of any deposits,

(iv) the making of cosmetic modifications or stylistic changes to products, processes or production methods,

(v) management studies or efficiency surveys, or

(vi) research in social sciences, arts or humanities,

shall not be “research and development activities” for the purposes of subsection (2)(a)(vi).

(c) For the purposes of paragraph (a), systematic, investigative or experimental activities or other activities shall be regarded as carried on wholly or mainly in the State only if not less than 75 per cent of the total amount expended in the course of such activities in the relevant period is expended in the State.

(7) For the purposes of subsection (2)(a)(vii), “the cultivation of horticultural produce” means the cultivation in a greenhouse or greenhouses in the State of plants used for food or for the production of food or ornament or of herbaceous plants, and includes the technical procedures in relation to such cultivation necessary for the production and preparation for market of flowers, decorative foliage, fruit, nursery stock, herbs and vegetable crops (including potatoes and seed potatoes), being a greenhouse or greenhouses in respect of which a certificate has been issued by the Minister for Agriculture and Food certifying that—

(a) the construction, improvement or repair of the greenhouse or greenhouses concerned, or

(b) the installation or improvement of irrigation or heating facilities in the greenhouse or greenhouses concerned,

may be eligible to be grant-aided under a scheme of assistance administered by that Minister.

(8) (a) For the purposes of subsection (2)(a)(xii), “qualifying recording” means a recording in any recording format in any musical style, including any associated video directly related to such recording, by a new artist, produced in a studio in the State, in respect of which the Minister for Arts, Heritage, Gaeltacht and the Islands (in this subsection referred to as “the Minister”) has, subject to such conditions as the Minister may consider proper and specifies in a certificate under this subsection, including a condition as to the maximum amount of money which may be raised under this Part in relation to a qualifying recording, given a certificate to the company which intends to produce the qualifying recording, stating that the recording and any such associated video may be treated as a qualifying recording for the purposes of this Part.

(b) In considering whether to give a certificate under this subsection, the Minister shall have regard

only to such guidelines as the Minister may from time to time lay down with the consent of the Minister for Finance, and those guidelines may, without prejudice to the generality of the foregoing, include provision for—

(i) the circumstances in which an artist is to be, and continues to be, regarded as a new artist, and

(ii) the manner, extent and timing in which the money to be raised under this Part by a company for the production, publication, marketing and promotion of a qualifying recording is to be used.

(c) A certificate under this subsection or any condition of such certificate may be amended, revoked or added to by the Minister by giving notice in writing to the qualifying company concerned of such amendment, revocation or addition, and this section shall apply as if—

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

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

(9) For the purposes of subsection (2)(a)(xiii), “tourist traffic undertakings” means—

(a) the operation of tourist accommodation facilities for which Bord Fáilte Éireann maintains a register in accordance with the Tourist Traffic Acts, 1939 to 1995, other than hotels, guest houses and self-catering accommodation,

(b) the operation of such other classes of facilities as may be approved of for the purposes of the relief by the Minister for Finance, in consultation with the Minister for Tourism, Sport and Recreation, on the recommendation of Bord Fáilte Éireann in accordance with specific codes of standards laid down by it, or

(c) the promotion outside the State of—

(i) one or more tourist accommodation facilities for which Bord Fáilte Éireann maintains a register in accordance with the Tourist Traffic Acts, 1939 to 1995, or

(ii) any of the facilities mentioned in paragraph (b).

(10) The trade shall during the relevant period be conducted on a commercial basis and with a view to the realisation of profits.