

Extension of relief under section 248 to certain individuals in relation to loans applied in acquiring interest in certain companies. FA78 s8; FA79 s9; FA96 s131(9)(a) 250.—(1) In this section—

“90 per cent subsidiary” has the meaning assigned to it by section 9;

“full-time employee” and “full-time director”, in relation to a company, mean an employee or director, as the case may be, who is required to devote substantially the whole of his or her time to the service of the company;

“holding company” has the same meaning as in section 411;

“part-time employee” and “part-time director”, in relation to a company, mean an employee or director, as the case may be, who is not required to devote substantially the whole of his or her time to the service of the company;

“private company” has the meaning assigned to it by section 33 of the Companies Act, 1963 .

(2) Notwithstanding that an individual does not satisfy one or both of the conditions set out in paragraphs (a) and (b) of section 248 (2), the individual shall be entitled to relief under section 248 for any interest paid on any loan to him or her applied for a purpose specified in section 248 (1) if—

(a) the company part of whose ordinary share capital is acquired or, as the case may be, to which the money is loaned is—

(i) both a company referred to in paragraph (a)(i) of section 248 (1) and a company in relation to which the individual was a full-time employee, part-time employee, full-time director or part-time director during the period taken as a whole from the application of the proceeds of the loan until the interest was paid, or

(ii) both a company referred to in paragraph (a)(ii) of section 248 (1) and a private company in relation to which, or in relation to any company which would be regarded as connected with it for the purposes of section 248, the individual was during that period a full-time director or a full-time employee,

and

(b) the company or any person connected with the company has not, during the period specified in paragraph (a)(i), made any loans or advanced any money to the individual or a person connected with the individual other than a loan made or money advanced in the ordinary course of a business which included the lending of money, being business carried on by the company or, as the case may be, by the person connected with the company.

(3) In relation to any payment or payments of interest on any loan or loans applied—

(a) in acquiring any part of the ordinary share capital of a company other than a private company,

(b) in lending money to such a company, or

(c) in paying off any other loan or loans applied for a purpose specified in paragraphs (a) and (b),

no relief shall be given for any year of assessment by virtue of this section other than to a full-time employee or full-time director of the company and no such relief shall be given to such employee or director on the excess of that payment, or the aggregate amount of those payments, for that year of assessment over £2,400.

(4) Where relief is given by virtue of this section to an individual and any loan made or money advanced to the individual or to a person connected with the individual is, in accordance with paragraph (c) of subsection (5) and by virtue of subparagraph (ii), (iii), (iv) or (v) of that paragraph, subsequently regarded as not having been made or advanced in the ordinary course of a business, any relief so given, which would not have been given if, at the time the relief was given, the loan or money advanced had been so regarded, shall be withdrawn and there shall be made all such assessments or additional assessments as are necessary to give effect to this subsection.

(5) For the purposes of this section—

(a) any question whether a person is connected with another person shall be determined in accordance with section 10 (as it applies for the purposes of the Tax Acts) and paragraph (b),

(b) a person shall be connected with any other person to whom such person has, otherwise than in the ordinary course of a business carried on by such person which includes the lending of money, made any loans or advanced any money, and with any person to whom that other person has so made any loan or advanced any money and so on,

(c) a loan shall not be regarded as having been made, or money shall not be regarded as having been advanced, in the ordinary course of a business if—

(i) the loan is made or the money is advanced on terms which are not reasonably comparable with the terms which would have been applied in respect of that loan or the advance of that money on the basis that the negotiations for the loan or the advance of the money had been at arm's length,

(ii) at the time the loan was made or the money was advanced the terms were such that subparagraph (i) did not apply, those terms are subsequently altered and the terms as so altered are such that if they had applied at the time the loan was made or the money was advanced subparagraph (i) would have applied,

(iii) any interest payable on the loan or on the money advanced is waived,

(iv) any interest payable on the loan or on the money advanced is not paid within 12 months from the date on which it became payable, or

(v) the loan or the money advanced or any part of the loan or money advanced is not repaid within 12 months of the date on which it becomes repayable,

(d) the cases in which any person is to be regarded as making a loan to any other person include a case where—

(i) that other person incurs a debt to that person, or

(ii) a debt due from that other person to a third party is assigned to that person;

but subparagraph (i) shall not apply to a debt incurred for the supply by that person of goods or services in the ordinary course of that person's trade or business unless the period for which credit is given exceeds 6 months or is longer than normally given by that person,

(e) a company other than a private company shall be deemed to be a company referred to in section 248 (1)(a)(i) if it is a holding company and is resident in the State, and

(f) an individual shall be deemed to be a full-time employee or full-time director of a company referred to in paragraph (e) if the individual is a full-time employee or full-time director of any company which is a 90 per cent subsidiary of that company.