

Qualifying companies. FA84 s15(1) to (12); FA85 s13(c); FA87 s10(a); FA91 s17(2); FA93 s25(f); FA95 s17(1)(e); FA96 s22; FA97 s146(1) and Sch9 Ptl par13(5) 495.—(1) In this section, “qualifying subsidiary”, in relation to a company, means a subsidiary of that company of a kind which a company may have by virtue of section 507.

(2) A company shall be a qualifying company if it is incorporated in the State and complies with this section.

(3) (a) The company shall throughout the relevant period be an unquoted company which is resident in the State and not resident elsewhere, and be—

(i) a company which exists wholly for the purpose of carrying on wholly or mainly in the State one or more qualifying trades, or

(ii) a company whose business consists wholly of—

(I) the holding of shares or securities of, or the making of loans to, one or more qualifying subsidiaries of the company, or

(II) both the holding of such shares or securities, or the making of such loans and the carrying on wholly or mainly in the State of one or more qualifying trades.

(b) Where a company raises any amount through the issue of eligible shares for the purposes of raising money for a qualifying trade which is being carried on by a qualifying subsidiary or which such a qualifying subsidiary intends to carry on, the amount so raised shall be used for the purpose of acquiring eligible shares in the qualifying subsidiary and for no other purpose.

(4) (a) A company whose trade consists of the cultivation of horticultural produce within the meaning of section 496 (7) shall not be a qualifying company unless and until it has shown to the satisfaction of the Revenue Commissioners that it has submitted to, and has had approved of by, the Minister for Agriculture and Food (in this subsection referred to as “the Minister”) a 3 year development and marketing plan in respect of the company's trade, being a plan primarily designed and formulated to increase the exportation of such produce or to displace the importation of such produce.

(b) In considering whether to approve of such a plan, the Minister shall have regard only to such guidelines in relation to such approval as may from time to time be agreed between the Minister and the Minister for Finance, and those guidelines may, without prejudice to the generality of the foregoing, set out—

(i) the extent to which the company's interest in land and buildings (other than greenhouses) may form part of its total assets,

(ii) specific requirements which have to be met in order to comply with either of the objectives

mentioned in paragraph (a), and

(iii) the extent to which the money raised through the issue of eligible shares should be used to identify new markets and to develop new or existing markets for the company's produce.

(5) A company whose trade consists of the production, publication, marketing and promotion of a qualifying recording within the meaning of section 496 (8) shall not be a qualifying company—

(a) unless it exists solely for the purposes of the production, publication, marketing and promotion of a qualifying recording or qualifying recordings by only one new artist, and

(b) unless and until it shows to the satisfaction of the Revenue Commissioners that a certificate referred to in section 496 (8) has been given and not revoked by the Minister for Arts, Heritage, Gaeltacht and the Islands to the company in relation to such qualifying recording or qualifying recordings;

but, where a certificate referred to in section 496 (8) is revoked by the Minister for Arts, Heritage, Gaeltacht and the Islands, the company shall not be a qualifying company.

(6) (a) A company whose trade includes one or more tourist traffic undertakings within the meaning of section 496 (9) shall not be a qualifying company unless and until it has shown to the satisfaction of the Revenue Commissioners that it has submitted to, and has had approved of by, Bord Fáilte Éireann a 3 year development and marketing plan in respect of that undertaking or those undertakings, as the case may be, being a plan primarily designed and formulated to increase tourist traffic and revenue from outside the State.

(b) In considering whether to approve of such a plan, Bord Fáilte Éireann shall have regard only to such guidelines in relation to such approval as may from time to time be agreed, with the consent of the Minister for Finance, between it and the Minister for Tourism, Sport and Recreation, and those guidelines may, without prejudice to the generality of the foregoing, set out—

(i) the extent to which the company's interests in land and buildings may form part of its total assets,

(ii) specific requirements which have to be met in order to comply with the objective mentioned in paragraph (a), and

(iii) the extent to which the money raised through the issue of eligible shares should be used in promoting outside the State the undertaking or undertakings, as the case may be.

(7) Without prejudice to the generality of subsection (3) but subject to subsection (8), a company shall cease to comply with subsection (3) if before the end of the relevant period a resolution is passed, or an order is made, for the winding up of the company, any other act is done for the like purpose) or the company is dissolved without winding up.

(8) A company shall not be regarded as ceasing to comply with subsection (3) by reason only of the fact that it is wound up or dissolved without winding up if—

(a) it is shown that the winding up or dissolution is for bonafide commercial reasons and not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax, and

(b) the company's net assets, if any, are distributed to its members before the end of the relevant period or, in the case of a winding up, the end (if later) of 3 years from the commencement of the winding up.

(9) The company's share capital shall not at any time in the relevant period include any issued shares not fully paid up.

(10) Subject to section 507, the company shall not at any time in the relevant period—

(a) control (or together with any person connected with it control) another company or be under the control of another company (or of another company and any person connected with that other company), or

(b) be a 51 per cent subsidiary of another company or itself have a 51 per cent subsidiary,

and no arrangements shall be in existence at any time in that period by virtue of which the company could fall within paragraph (a) or (b).

(11) A company shall not be a qualifying company if, in the case of a company in which a relevant investment is made by a specified individual (being that individual's first such investment in that company), any transaction in the relevant period between the company and another company (being the immediate former employer of the individual), or a company which controls or is under the control of that other company, is otherwise than by means of a transaction at arm's length, or if—

(a) (i) an individual has acquired a controlling interest in the company's trade after the 5th day of April, 1984, and

(ii) at any time in the period mentioned in subsection (14) the individual has or has had a controlling interest in another trade,

and

(b) the trade carried on by the company or a substantial part of that trade—

(i) is concerned with the same or similar types of property or parts of property or provides the same or similar services or facilities as the other trade, or

(ii) serves substantially the same or similar outlets or markets as the other trade.

(12) For the purposes of this section, a person shall have a controlling interest in a trade—

(a) in the case of a trade carried on by a company, if—

(i) such person controls the company,

(ii) the company is a close company for the purposes of the Corporation Tax Acts and such person or an associate of such person is a director of the company and the beneficial owner of, or able directly or through the medium of other companies or by any other indirect means to control, more than 30 per cent of the ordinary share capital of the company, or

(iii) not less than 50 per cent of the trade could, in accordance with section 400 (2), be regarded as belonging to such person,

or

(b) in any other case, if such person is entitled to not less than 50 per cent of the assets used for, or the income arising from, the trade.

(13) For the purposes of subsection (12), there shall be attributed to any person any rights or powers of any other person who is an associate of that person.

(14) The period referred to in subsection (11)(a)(ii) shall be the period beginning 2 years before and ending 3 years after—

(a) the date on which the shares were issued, or

(b) if later, the date on which the company began to carry on the trade.

(15) In subsections (11) and (14), references to a company's trade shall include references to the trade of any of its subsidiaries.