

PART 16 Income Tax Relief for Investment in Corporate Trades— Business Expansion Scheme and Seed Capital Scheme

Interpretation ). FA84 s11(1), (3) and (4), s12(2) and (7) and s16(4); FA85 s13(a); FA90 s10(a); FA93 s25(a) and (b)(v); FA94 s16(1)(a)(i); FA95 s17(1)(a); FA96 s16; FA97 s9(a), s146(1) and Sch9 Ptl par13(1) 488.—(1) In this Part—

“advance factory building” means a factory building the construction of which is—

(a) promoted by a local community group the objective of which, or one of the main objectives of which, is to promote the development of, and the creation of opportunities for employment in, its locality, and

(b) undertaken without any prior commitment, either direct or indirect, in writing or otherwise, by a person that either the person or any other person will enter into a lease for its use;

“associate” has the same meaning in relation to a person as it has by virtue of subsection (3) of section 433 in relation to a participator, except that the reference in paragraph (b) of that subsection to any relative of a participator shall be excluded from such meaning;

“certifying agency” means an industrial development agency, Bord Fáilte Éireann, An Bord Iascaigh Mhara or An Bord Tráchtála— The Irish Trade Board (as may be appropriate);

“certifying Minister” means the Minister for Agriculture and Food, the Minister for Arts, Heritage, Gaeltacht and the Islands or the Minister for the Marine and Natural Resources (as may be appropriate);

“control”, except in sections 493 (7) and 507 (2)(b), shall be construed in accordance with subsections (2) to (6) of section 432;

“debenture” has the same meaning as in section 2 of the Companies Act, 1963 ;

“director” shall be construed in accordance with section 433 (4);

“eligible shares” means new ordinary shares which, throughout the period of 5 years beginning on the date on which they are issued, carry no present or future preferential right to dividends or to a company's assets on its winding up and no present or future preferential right to be redeemed;

“factory building” has the same meaning as in section 2 of the Industrial Development Act, 1986 ;

“full-time employee” and “full-time director” have the same meanings respectively as in section 250;

“industrial development agency” means Forbairt, the Industrial Development Agency (Ireland), the Shannon Free Airport Development Company Limited or Údarás na Gaeltachta (as may be appropriate);

“market value” shall be construed in accordance with section 548;

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

“qualifying company” has the meaning assigned to it by section 495;

“qualifying trading operations” has the meaning assigned to it by section 496 (2);

“relevant employment”, in relation to a specified individual, means employment throughout the relevant period by the company in which the specified individual makes a relevant investment (being that individual's first such investment in that company) and where the specified individual is a full-time employee or full-time director of the company;

“relevant investment”, in relation to a specified individual, means the amount or the aggregate of the amounts subscribed in a year of assessment by the specified individual for eligible shares in a qualifying company which carries on or intends to carry on relevant trading operations;

“relevant period”, in relation to relief in respect of any eligible shares issued by a company, means—

(a) as respects sections 493 and 498 to 501, the period beginning on the incorporation of the company (or, if the company was incorporated more than 2 years before the date on which the shares were issued, beginning 2 years before that date) and ending 5 years after the issue of the shares,

(b) as respects sections 495 , 496 , 503 and 507, the period beginning on the date on which the shares were issued and ending either 3 years after that date or, where the company was not at that date carrying on a qualifying trade, 3 years after the date on which it subsequently began to carry on such a trade,

(c) as respects a relevant employment, the period beginning on the date on which the shares are issued or, if later, the date on which the employment commences and ending 12 months after that date, and

(d) as respects a specified individual, the period beginning on the date on which the shares are issued and ending either 2 years after that date or, where the company was not at that date carrying on relevant trading operations, 2 years after the date on which it subsequently began to carry on such operations;

“relevant trading operations” has the meaning assigned to it by section 497;

“specified individual” has the meaning assigned to it by section 494;

“the relief” and “relief” mean relief under section 489, and references to the amount of the relief shall be construed in accordance with subsection (6) of that section;

“unquoted company” means a company none of whose shares, stocks or debentures are—

(a) listed in the official list of a stock exchange, or

(b) quoted on an unlisted securities market of a stock exchange other than on the market known as the Developing Companies Market of the Irish Stock Exchange.

(2) References in this Part to a disposal of shares include references to a disposal of an interest or right in or over the shares, and an individual shall be treated for the purposes of this Part as disposing of any shares which the individual is treated by virtue of section 587 as exchanging for other shares.

(3) References in this Part to the reduction of any amount include references to its reduction to nil.

(4) References in this Part to a trade shall be construed—

(a) without regard to so much of the definition of “trade” in section 3 as relates to adventures or concerns in the nature of trade, and

(b) as including—

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

(ii) the research and development or other similar activity referred to in section 496 (2)(a)(x), and

(iii) the production, publication, marketing and promotion of a qualifying recording or qualifying recordings referred to in section 496 (2)(a)(xii);

but for the other purposes of the Tax Acts the question of whether a trade is being carried on shall be determined without regard to this subsection.