

Individuals qualifying for relief. FA84 s14; FA93 s25(e); FA94 s16(1)(b); FA97 s146(1) and Sch9 par13(4) 493.—(1) (a) An individual shall qualify for relief if he or she subscribes on his or her own behalf for eligible shares in a qualifying company and is not at any time in the relevant period connected with the company.

(b) For the purposes of this section and paragraph 2 of Schedule 10, any question whether an individual is connected with a company shall be determined in accordance with this section.

(2) An individual shall be connected with a company if the individual or an associate of the individual is—

(a) a partner of the company, or

(b) subject to subsection (3), a director or employee of the company or of another company which is a partner of that company.

(3) An individual shall not be connected with a company by reason only that the individual or an associate of the individual is a director or employee of the company or of another company which is a partner of that company unless the individual or the individual's associate (or a partnership of which the individual or the individual's associate is a member) receives a payment from either company during the period of 5 years beginning on the date on which the shares are issued or is entitled to receive such a payment in respect of that period or any part of it; but for that purpose there shall be disregarded—

(a) any payment or reimbursement of travelling or other expenses wholly, exclusively and necessarily incurred by the individual or the individual's associate in the performance of the duties of the individual or of the associate, as the case may be, as such director or employee,

(b) any interest which represents no more than a reasonable commercial return on money lent to either company,

(c) any dividend or other distribution paid or made by either company which does not exceed a normal return on the investment,

(d) any payment for the supply of goods to either company which does not exceed their market value, and

(e) any reasonable and necessary remuneration which—

(i) (I) is paid for services rendered to either company in the course of a trade or profession (not being secretarial or managerial services or services of a kind provided by the company itself), and

(II) is taken into account in computing the profits or gains of the trade or profession under Case I or II of Schedule D or would be so taken into account if it fell in a period on the basis of which those profits or gains are assessed under that Schedule,

or

(ii) in a case where the individual is a director or an employee of either company and is not otherwise connected with either company, is paid for service rendered to the company of which the individual is a director or an employee in the course of the directorship or the employment.

(4) An individual shall be connected with a company if he or she directly or indirectly possesses or is entitled to acquire more than 30 per cent of—

- (a) the issued ordinary share capital of the company,
- (b) the loan capital and issued share capital of the company, or
- (c) the voting power in the company.

(5) For the purposes of subsection (4)(b), the loan capital of a company shall be treated as including any debt incurred by the company—

- (a) for any money borrowed or capital assets acquired by the company,
- (b) for any right to receive income created in favour of the company, or
- (c) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt (including any premium on the debt).

(6) An individual shall be connected with a company if he or she directly or indirectly possesses or is entitled to acquire such rights as would, in the event of the winding up of the company or in other circumstances, entitle the individual to receive more than 30 per cent of the assets of the company which would at that time be available for distribution to equity holders of the company, and for the purposes of this subsection—

- (a) the persons who are equity holders of the company, and
- (b) the percentage of the assets of the company to which the individual would be entitled,

shall be determined in accordance with sections 413 and 415, references in section 415 to the first company being construed as references to an equity holder and references to a winding up being construed as including references to any other circumstances in which assets of the company are available for distribution to its equity holders.

(7) An individual shall be connected with a company if he or she has control of it within the meaning of section 11.

(8) (a) An individual shall not be connected with a company by reason only of subsection (4), (6) or (7)—

(i) if throughout the relevant period the aggregate of all amounts subscribed for the issued share capital and the loan capital (within the meaning of subsection (5)) of the company does not exceed £250,000, or

(ii) in the case of a specified individual, by virtue only of a relevant investment in respect of which he or she has been given relief in accordance with section 489 (5).

(b) Notwithstanding paragraph (a), relief granted to an individual in respect of a subscription for eligible shares at a time when by virtue of this subsection the individual was not connected with the company shall not be withdrawn by reason only that the individual subsequently becomes connected with the company by virtue of subsection (4), (6) or (7).

(9) For the purposes of this section, an individual shall be treated as entitled to acquire anything which he or she is entitled to acquire at a future date or will at a future date be entitled to acquire, and there shall be attributed to any person any rights or powers of any other person who is an associate of that person.

(10) In determining for the purposes of this section whether an individual is connected with a company, no debt incurred by the company by overdrawing an account with a person carrying on a business of banking shall be treated as loan capital of the company if the debt arose in the ordinary course of that business.

(11) Where an individual subscribes for shares in a company with which the individual is not connected (either within the meaning of this section or by virtue of paragraph 2(2)(b) of Schedule 10), he or she shall nevertheless be treated as connected with it if he or she subscribes for the shares as part of any arrangement which provides for another person to subscribe for shares in another company with which the individual or any other individual who is a party to the arrangement is connected (within the meaning of this section or by virtue of that paragraph).